84-1319

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS

No.

In the Supreme Court of the United States

NEAL H. DENSMORE
Petitioner

v

CITY OF BOCA RATON, FLORIDA;
DONALD R. CRAWFORD, individually
and as City Manager of the City;
WILLIAM K. HOWELL, individually
and as City Attorney for the City,
Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

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49

QUESTIONS PRESENTED

1. WHETHER IT IS A DENIAL OF DUE PROCESS OF LAW PRESCRIBED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION FOR A GOVERNMENT EMPLOYEE TO BE DISCHARGED FROM PUBLIC EMPLOYMENT WITHOUT FIRST BEING AFFORDED A PRE-TERMINATION HEARING WHEN THE DISCHARGE AND ATTENDANT CIRCUMSTANCES INFRINGE UPON THE EMPLOYEE'S PROPERTY AND LIBERTY INTERESTS IN CONTINUED EMPLOYMENT?

2. WHETHER THE DEFENSE OF GOOD FAITH IS AVAILABLE TO A GOVERNMENT IN A CIVIL RIGHTS CASE BROUGHT UNDER 42 U.S.C. § 1983 AND WHETHER THE DEFENSE OF GOOD FAITH IS AVAILABLE TO GOVERNMENT OFFICIALS WHERE THEIR ACTS CONTRAVENE SETTLED, INDISPUTABLE LAW OR WHERE THEY ACT ARBITRARY, FANCIFUL OR CLEARLY UNREASONABLE?

TABLE OF CONTENTS

PAGE

Questions Presented i

Index of Authorities ..... iv, v

Jurisdiction vi

Constitutional and Statutory Provisions Involved vii

Statement of the Case 1

Reasons for Granting the Writ 3

Argument:

1. IT IS A DENIAL OF DUE PROCESS OF LAW PRESCRIBED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION FOR A GOVERNMENT EMPLOYEE TO BE DISCHARGED FROM PUBLIC EMPLOYMENT WITHOUT FIRST BEING AFFORDED A PRE-TERMINATION HEARING WHEN THE DISCHARGE AND ATTENDANT CIRCUMSTANCES INFRINGE UPON THE EMPLOYEE'S PROPERTY AND LIBERTY INTERESTS IN CONTINUED EMPLOYMENT.

2. THE DEFENSE OF GOOD FAITH IS NOT AVAILABLE TO A GOVERNMENT IN A CIVIL RIGHTS CASE BROUGHT UNDER 42 U.S.C. §1983 AND THE DEFENSE OF GOOD FAITH IS NOT AVAILABLE TO GOVERNMENT OFFICIALS WHERE THEIR ACTS CONTRAVENE SETTLED, INDISPUTABLE LAW OR WHERE THEY ACT ARBITRARY, FANCIFUL OR CLEARLY UNREASONABLE 3

Conclusion 12

Appendix A – Amended Complaint for Compensatory and Punitive Damages filed by Petitioner 1a

Appendix B – Answer to Amended Complaint filed by Respondents, City of Boca Raton and William K. Howell ... 1b

Appendix C – Answer to Amended Complaint filed by Respondent, Donald Crawford 1c

Appendix D – Article XIII, § 2, of the Personnel Rules and Regulations of the City of Boca Raton 1d

Appendix E – Page 13 of the Court's instructions to the jury 1e

Appendix F – Page 9 of the Court's instructions to the jury 1f

Appendix G – Court Exhibit 1 ..... 1g

Appendix H – Court Exhibit 3 ..... 1h

Appendix I – Jury Verdict 1i

Appendix J – Judgment of the United States District Court for the Southern District of Florida 1j

Appendix K – Judgment of the United States Court of Appeals for the Eleventh Circuit 1k

Appendix L – Order of the United States Court of Appeals for the Eleventh Circuit on Petition for Rehearing and Suggestion for Rehearing en banc ... 1l

INDEX OF AUTHORITIES

CASES	PAGE
Bishop v. Wood, 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976)	4
Boddie v. Connecticut, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)	6
Densmore v. City of Boca Raton, 368 So. 2d 945 (Fla. 4th DCA 1979)	10
Douthit v. Jones, 619 F. 2d 527 (5th Cir. 1980)	9
Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972)	6, 7, 11
Hearn v. City of Gainesville, 688 F. 2d 1328 (11th Cir. 1982)	4
Jackson v. Mississippi, 644 F. 2d 1142 (5th Cir. 1981)	9
McNayr v. Kelly, 184 So. 2d 428 (Fla. 1966)	10
Milier v. City of Mission, 705 F. 2d 368 (10th Cir. 1983)	3, 4, 6, 7
News-Press Publishing Co. v. Wisher, 345 So. 2d 646 (Fla. 1977)	9
Owen v. City of Independence, 445 U.S. 622, 100 S. Ct. 1398, 63 L. Ed. 2d 673 (1980)	4, 6, 7, 8, 11
State of Florida ex rel. Veale v. City of Boca Raton, 353 So. 2d 1194 (Fla. 4th DCA 1977)	9
Wisher v. News-Press Publishing Co., 310 So. 2d 345 (Fla. 2d DCA 1975)	9

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. Const. amend. XIV, § 1 vii

42 U.S.C. § 1983 ..... vi, vii, 1, 9

5 U.S.C. § 552(b) (6) 10

28 U.S.C. § 1254 (1) vi

OTHER AUTHORITIES

50 Am. Jur. 2d *Libel and Slander* § 222 (1970) .. 10

U.S. Department of Commerce, Statistical Abstract of the United States 429 (104th ed. 1984) 10

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

NEAL H. DENSMORE, by and through his Attorney, RICHARD E. BOSSE, petitions herein for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit affirming the trial court's judgment finding that Respondents did not violate Petitioner's rights secured by 42 U.S.C. § 1983 and that Respondents did not deprive Petitioner of his property and liberty interests without due process of law in violation of the rights secured to him under the Fifth and Fourteenth Amendments to the United States Constitution.

JURISDICTION

The Judgment sought to be reviewed was filed October 15, 1984. *Judgment of the Eleventh Circuit Court of Appeals*, Appendix K at 1. On November 21, 1984 the United States Court of Appeals for the Eleventh Circuit denied Petitioner's petition for rehearing and suggestion for rehearing en banc. *Order of the Eleventh Circuit Court of Appeals on Rehearing*, Appendix L at 1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1, provides, in pertinent part:

No State shall deprive any person of life, liberty, or property without due process of law.

Title 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This was a civil action brought before the United States District Court, Southern District of Florida, by the Petitioner, NEAL H. LENSMORE, for compensatory and punitive damages for violations of rights secured by Title 42 U.S.C. § 1983. The Respondents were CITY OF BOCA RATON, FLORIDA, DONALD R. CRAWFORD, individually and as City Manager of the City, and WILLIAM K. HOWELL, individually and as City Attorney for the City. The Petitioner alleged that the actions of the Respondents in their termination of Petitioner from his employment without a hearing prior to his discharge with the City of Boca Raton, deprived him of property without due process of law in violation of rights secured to him under the Fifth and Fourteenth Amendments to the United States Constitution.

Petitioner further alleged that the termination of his employment from the City by Respondents deprived him of a liberty interest secured to him by the Fourteenth Amendment to the United States Constitution. Petitioner alleged that his liberty interest was infringed upon when the Respondents terminated him with attendant publicity, seriously damaging his professional reputation in the community as an electrical inspector, thereby depriving him of liberty he would have enjoyed in seeking another electrical inspector position. Petitioner alleged in Count II of his Amended Complaint that the Respondents had violated 42 U.S.C. § 1983 in that Respondents conspired to interfere with his civil rights by depriving him of his property and liberty interests in his employment.

In or about October, 1975, the City of Boca Raton, by and through its City Council, commissioned two local attorneys to perform an investigation of alleged wrongdoing in the Building Department of the City of Boca Raton. Such investigation was performed with extensive attendant publicity. Petitioner had been an electrical inspector with the Boca Raton Building Department for fifteen (15) years prior to October, 1975. On or about December 15, 1975, the investigative attorneys deliver-

ed to the Boca Raton City Council a "secret report", which was the result of their alleged investigation into the Building Department. The City Council turned the report over to the Respondents, CRAWFORD and HOWELL, with instructions to continue the investigations, taking whatever steps were appropriate and not to release the report to the press or public.

As a result of the investigation and on the basis of information contained within the report, on or about December 18, 1975, CRAWFORD, with the approval and authority of the City Council of the City of Boca Raton, terminated Petitioner's employment with the City of Boca Raton. Petitioner's termination was effectuated by means of a letter addressed to him dated December 18, 1975. The letter stated in vague charges that the Petitioner was guilty of taking and conspiring to take unlawful compensation on four (4) construction sites. *Amended Complaint*, Appendix A at 4 . That simultaneously with the execution of this letter, Respondents CRAWFORD and HOWELL caused a press release to be issued disseminating to the public that on the basis of findings as contained in the "secret report", Petitioner was terminated.

On or about December 22, 1975, Respondent, CRAWFORD, released for public dissemination the letter of termination dated December 18, 1975, to the press, so that the charges of felonious conduct made in the letter appeared and were published in all leading newspapers in South Florida, including the *Boca Raton News*, the *Miami Herald*, the *Fort Lauderdale Sun Sentinel*, the *Fort Lauderdale News*, the *Palm Beach Post*, and the *Palm Beach Times*. The charges contained in the termination letter, and as printed in the newspaper articles, were totally false as established by the Petitioner at trial by calling all witnesses with direct evidence named in the report. The Respondents have not refuted the same.

During this time, the Petitioner was never afforded the information or "secret report" upon which the charges and the termination letter were based so that he could properly apprise himself and defend the same.

Pursuant to the Personnel Rules and Regulations of the City of Boca Raton and upon request, the Respondents held a review before the City Manager on December 29, 1975. At such review, the charges were read publicly to the Petitioner and press and the Petitioner was invited to refute them. Again, the Respondents refused to divulge any information upon which the charges were based or the "secret report" so that the Petitioner had nothing to refute. The Petitioner vehemently objected to such unconstitutional procedure but to no avail, except for the amending of a vague charge in his termination letter in an attempt by the Respondents to make it less ambiguous. *Amended Complaint*, Appendix A at 7 .

Petitioner was never afforded notice and a hearing *prior* to the termination of his employment. He was never given the opportunity to show the Respondents they were wrong before his family, friends, neighbors, and the public in South Florida were told by the Respondents that he was a criminal.

The case was submitted to the jury. The trial court failed and refused to instruct the jury that the Petitioner was entitled to a hearing *prior* to his discharge even after they had requested further instructions on this point. Without such instruction, the jury returned a verdict finding the Respondents did not violate or conspire to violate Petitioner's federal constitutional rights. *Jury Verdict*, Appendix I at 1. A judgment on the jury verdict was entered and the Petitioner appealed to the Eleventh Circuit Court of Appeals. *Judgment of the District Court*, Appendix J at 1. The Court of Appeals affirmed. From that decision, Petitioner has filed this Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

The decision of the Eleventh Circuit Court of Appeals in this cause conflicts with the decision of the Tenth Circuit Court of Appeals in *Miller v. City of Mission*, 705 F. 2d 368 (10th Cir. 1983), as to the right of a government employee who has a property and liberty interest in his employment to be afforded a hearing *prior* to discharge. The decision in

Miller v. City of Mission, *supra*, is a natural extension of the procedural due process safeguards which this Court has enunciated in *Bishop v. Wood*, 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976) and *Owen v. City of Independence*, 445 U.S. 622, 100 S. Ct. 1398, 63 L. Ed. 2d 673 (1980).

The Petitioner had a property interest in his employment. A property interest is created by ordinance or implied by contract. *Bishop v. Wood*, *supra*. Pursuant to the Personnel Rules and Regulations of the City of Boca Raton, Petitioner could not be dismissed except for cause. *City of Boca Raton, Florida, Personnel Rules and Regulations, Article XIII*, Appendix D at 1 . The Eleventh Circuit in *Hearn v. City of Gainesville*, 688 F. 2d 1328 (11th Cir. 1982) has determined that Florida law holds as such. Respondents had contested this through trial but dismissed such argument when the jury was instructed and have not raised the same since.

When the Petitioner was dismissed with the release of his termination letter to the press, which called him a criminal and which received prominent coverage in the press, he was deprived of his liberty interes without due process of law. As this Court reasoned in *Owen v. City of Independence*, *supra*, such a discharge, accompanied with defamatory and stigmatizing charges released to the public, triggers procedural due process safeguards requiring a hearing at which the employee can refute the charges and clear his name. The Tenth Circuit in *Miller v. City of Mission*, *supra*, has extended this reasoning and placed great importance on such rights by requiring this hearing to be *prior* and *before* the termination unless an emergency prevents such. The Eleventh Circuit Court of Appeals in its decision below refuses to follow such reasoning and conflicts with the same.

Such liberty interest is important because such publicity on an innocent man can ruin his life. As the Court stated in *Miller v. City of Mission*, *supra*, his good name, reputation, honor and integrity can be lost and the freedom to take advantage of other employment opportunities foregone.

Petitioner was not "on the take". Petitioner clearly established in the trial court that the "secret report" upon which his termination was based was a sham and replete with falsehoods. In fact, testimony elicited from the witnesses named in the report in the trial court crystallized the innocence of the Petitioner. Petitioner was nothing more than an innocent civil service employee who was used as a political pawn to advance the political objectives and careers of the individual Respondents. In so doing, his life and career were ruined, and he was defamed in front of his family, friends and business associates and was unable to procure any employment in his chosen livelihood. Other adverse repercussions followed. Based upon the "secret report", he was charged by the State Attorney's office with felonious criminal conduct. As a result of these false accusations, he also was later audited and investigated by the Internal Revenue Service. The State Attorney's prosecution was dismissed prior to trial with prejudice for lack of any evidence of any offer or receipt of any unlawful compensation. After a thorough and complete investigation and audit, the Internal Revenue Service found no evidence of any illegal compensation or unreported income or income not earned as salary.

It is undisputed that Petitioner was not afforded a hearing *prior* to his discharge. It was undisputed at trial and therefore was not an issue of fact for the jury's consideration. The trial court, though, instructed the jury that they were to determine whether the Petitioner received adequate notice and a hearing and if such hearing was at a meaningful time and in a meaningful manner. *Court Instruction*, Appendix F at 1. The jury became confused. They requested a further instruction and in part asked, "Does the employee have the right to the above review before the press is informed of the charges?" *Court Exhibit 1*, Appendix G at 1. The trial court then compounded the jury's confusion by answering the question with the following instructions:

. . . The hearing must be held at a meaningful time and in a meaningful manner. What is meaningful under the cir-

> cumstances of the case is for you as judges of the facts to determine.
>
> Thus, whether the review should be private or public or whether the press should be informed at this or that time, and at what time the hearing should be held . . . are all questions for you to decide. *Court Exhibit 3*, Appendix H at 1.

The trial court requested the jury to determine the resolution of a constitutional right regarding due process which was beyond the province of the jury and is a decision of constitutional law which should have been determined by the court as in *Miller v. City of Mission*, *supra*. The Eleventh Circuit Court of Appeals in affirming this action has determined that a prior hearing is not mandated and is in conflict with the Tenth Circuit in *Miller v. City of Mission*, *supra*.

The right to a *prior* hearing is the most important and crucial element to the safeguard of liberty and due process as encompassed within the Fourteenth Amendment. As the court enunciated in *Miller v. City of Mission*, *supra*, and as this Court has enunciated in *Owen v. City of Independence*, *supra*, more than a property interest is at stake. The governmental employee has an additional liberty interest. When only a property interest is at stake, this Court has reasoned in *Fuentes v. Shevin*, 407 U.S. 67, 92, S. Ct. 1983, 32 L. Ed. 2d 556 (1972), that due process of law requires a prior opportunity to be heard before chattels are taken (in this case Mrs. Fuente's stove). The analysis is based upon this Court's earlier determination in *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S. Ct. 780, 786, 28 L Ed. 2d 113 (1971):

> That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest , . . .

The interest of the Petitioner and governmental employees who have a property interest in their job is much greater in that they not only have a property interest at stake but an

additional far more important liberty interest, i.e., the protection of their good names, reputation, honor and integrity, the freedom to take advantage of other employment opportunities and to make a living at their chosen livelihood. It is this additional greater liberty interest which the Court enunciated in *Owen v. City of Independence*, *supra*, and it is the liberty which is the cornerstone and foundation of this country's freedoms. It is the liberty interest which the Tenth Circuit in *Miller v. City of Mission*, *supra*, sacredly attempts to protect. Thus, pursuant to *Fuentes*, the Petitioner and government employees, just on their property interest alone, before the more important liberty interest is considered, are entitled to a hearing prior to and before the deprivation of such property interest. A fortiori, they must be entitled to the same before their property interest and additional liberty interest are deprived and they are defamed and inhibited from further employment.

Respondents have argued in the Court of Appeals for the first time that the Petitioner was not entitled to a pre-termination hearing because his continued employment endangered the health, safety and welfare of the citizens of Boca Raton, Florida. This obvious attempt to bring themselves under the language of *Miller v. City of Mission*, *supra*, as to an emergency situation is not well taken because it was never pled, argued nor jury instruction requested in the trial court. Such cannot be initially introduced at the appellate level. Further, there was simply no emergency which existed which would justify a failure to afford Petitioner a pre-termination hearing. *Miller v. City of Mission*, *supra*.

However, as this Court noted in *Fuentes v. Shevin*, 407 U.S. 67 at 90, "There are 'extraordinary situations' that justify postponing notice and opportunity for a hearing." As this Court further stated at page 90:

> Only in a few limited situations has this Court allowed outright seizure without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important govern-

> mental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force; the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance.

Respondents have never pled nor proved the elements required by this Court to deprive Petitioner of his property interest without a *prior* hearing. *Answers to Amended Complaint filed by Respondents*, Appendices B an C at 1. The Respondents have never pled nor proved that the determination was made to deny him the prior hearing under the standards of a narrowly drawn statute. They cannot, because there is none. This, of course, does not take into consideration a government employee's additional liberty interest not to be defamed in the press without the prior opportunity to be heard.

The trial court also committed reversible error in its instructions to the jury on the Respondents' defense of good faith. The court instructed:

> If the Defendants reasonably believe that they were acting by authority of a valid state law or a county rule or regulation, and acted in good faith on the basis of this belief, their reasonable belief in good faith action constitutes a defense to the Plaintiff's claim, even though the state or county rule or regulation may have been invalid. *Court Instruction*, Appendix E at 1.

This was the only instruction the court gave with respect to the defense of good faith. It is fatally defective because it failed to advise the jury which Respondent was entitled to the defense of good faith. In *Owen v. City of Independence*, 445 U.S. 622, 100 S. Ct. 1398, 63 L. Ed. 2d 673 (1980), this Court held that a municipality has no immunity from liability under the Civil Rights Act, flowing from its constitutional violations, and may not assert the good faith

of its officers or agents as a defense to liability under 42 U.S.C. § 1983. The trial court failed to make such distinction in its instructions.

The Petitioner would further put forth the proposition or request the Court to address the issue that Respondents HOWELL and CRAWFORD lost their cloak of qualified immunity because their acts contravened settled, indisputable law or were so likely to produce injury that only harm can be characterized as substantially certain to result. In December of 1975 the settled, indisputable law in the State of Florida was that any termination letter given to Petitioner was confidential and not subject to public disclosure. The Florida Second District Court of Appeals Decision in *Wisher v. News-Press Publishing Co.*, 310 So. 2d 345 (Fla. 2d DCA 1975) held that personnel files and records were confidential and not subject to disclosure under the Florida Public Records Act. Respondents, CRAWFORD and HOWELL, were not only aware of this decision, they were intimately familiar with it. They had discussed it. In fact, at the time, they were defending a suit from the Boca Raton News seeking the "secret report" prepared against Petitioner based upon the *Wisher* decision. *See State of Florida ex rel. Veale v. City of Boca Raton*, 353 So 2d 1194 (Fla. 4th DCA 1977). The Florida Supreme Court overturned the Florida Second District Court of Appeals in *Wisher v. News-Press Publishing Co.*, *supra*, and held that personnel files are not confidential under Florida law. *News-Press Publishing Co. v. Wisher*, 345 So 2d 646 (Fla. 1977). This did not occur though until 1977.

The Fifth Circuit has held that in such instances the public official loses his cloak of qualified immunity. In *Jackson v. Mississippi*, 644 F. 2d 1142 (5th Cir. 1981), the Court held that an official, even if he is acting in sincere subjective belief that he is doing right, loses his cloak of qualified immunity if his actions contravene settled, indisputable law. In *Douthit v. Jones*, 619 F. 2d 527 (5th Cir. 1980), the Court found that government officials were not entitled to qualified immunity defenses when the action they took was

so likely to produce injury that harm can be characterized as substantially certain to result. Thus, the Eleventh Circuit Court of Appeals' failure to reverse the judgment of the trial court contradicts the Court's determination of the law for municipal governments and conflicts with the Fifth Circuit as to the individual Respondents' loss of qualified immunity.

This case is deserving of the Court's review because it involves constitutional rights of public employees in government. The importance of the issues presented here are magnified when it is considered that this is the only resort for local and state employees who are wronged in such manner. Executive officials under common and state law enjoy an absolute immunity with respect to defamatory and libelous publications made in connection with the performance of their official duties, *McNayr v. Kelly*, 194 So. 2d 428 (Fla. 1966), 50 Am. Jur. 2d *Libel & Slander* § 222 (1970). Moreover, in *Densmore v. City of Boca Raton*, 368 So 2d 945 (Fla. 4th DCA 1979), the Florida Fourth District Court of Appeals held that the City Manager enjoyed an absolute privilege in disclosing the reasons for discharge of the Petitioner herein.

It should be noted that federal employees are not subject to such abuse. Under the Freedom of Information Act, 5 U.S.C. § 552 (b) (6), personnel files are privileged and confidential. Therefore, they can never be deprived of their liberty interest in their employment because the reasons for the discharge cannot be disseminated publicly. Unfortunately, the remaining local and state employees, comprising over three-fourths of all government workers, have no such safeguards. U.S. Department of Commerce, Statistical Abstract of the United States 429 (104th ed. 1984).

In light of these circumstances, the liberty and property interests in a governmental worker's employment must be vigorously safeguarded and protected. The decision below contravenes these principles and conflicts with the Tenth Circuit's continued application of the analysis and reasoning for the protection of these rights as enunciated by this Court

in *Owen v. City of Independence*, *supra*. Such Constitutional rights are not protected when a government employee does not have the opportunity to exhibit to his superiors by a prior hearing that their allegations for termination are incorrect. Thus, without such opportunity, he is subject to the destruction of his career through neglect, inadvertence and intentional malfeasance of his superiors without any opportunity of correcting the same. Such nonpolitical government employees become political pawns subject to the whims and caprices of their superiors for the advancement and aggrandisement of their own careers.

The Court in *Fuentes v. Shevin*, *supra*, has mandated that a *prior* hearing is required for personal property. The Court should address this identical issue for governmental employees who have a proprietary interest in their employment. Such decision can affect the careers of over seventy-five percent (75%) of all public employees. Further, the Court has not addressed this area since *Owen v. City of Independence*, *supra*. Moreover, it has been inherent in Anglo-Saxon heritage and philosophy that liberty and a man's reputation are far more important and deserving of sacred protection than property. The Declaration of Independence describes "life, liberty and the pursuit of happiness." As Shakespeare said in Othello:

> Who steals my purse steals trash; 'tis something, nothing;
> 'Twas mine, 'tis his, and has been slave to thousands;
> But he that filches from me my good name
> Robs me of that which not enriches him
> And makes me poor indeed.

Therefore, review by this Court will determine the rights of governmental employees in their property and additional liberty interests in the same vein as the Court found it necessary to determine such rights in chattels.

CONCLUSION

Based upon the authorities and arguments advanced herein, Petitioner respectfully requests that this most Honorable Court grant his Petition for Writ of Certiorari, or in the alternative, that the Order of the Eleventh Circuit Court of Appeals be summarily reversed.

Respectfully submitted:

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APPENDIX A

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City,)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City,)
RICHARD SHERER, individually and)
as Police Officer and Detective of the)
City.)
)
Defendants.)

AMENDED COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

JURISDICTION

1. Federal jurisdiction is invoked pursuant to Title 28 U.S.C. §§1331 and 1343. This is an action authorized by law to redress the deprivation under color of law, statutes, regulations, customs and usages of the State of Florida and ordinances, regulations, customs and usages of the City of Boca Raton, a political subdivision of the State of Florida, of the rights, privileges and immunities secured to the plaintiff by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the Constitution of the United States and by certain acts of Congress providing for equal rights of citizens and of all persons within the jurisdiction of the United States, to recover damages and secure other relief under certain acts of Congress for the protection of Civil Rights; and pursuant to the federal courts' pendant juris-

diction to hear claims arising under the laws of Florida upon which relief can be granted arising out of similar facts.

2. This is a civil action for compensatory and punitive damages for violations of rights secured by Title 42, United States Code, Sections 1983 and 1985 (41 U.S.C.A. §§1983 and 1985) and certain other laws of Congress, the Constitution of the United States, the Florida Constitution, Florida Statutes and common law respecting the rights of municipal employees to the right to enjoy privacy and sanctity, and to be free of unwarranted and unlawful governmental invasion of the privacy of his life, the right to procedural due process before his property in the form of his employment is taken attended by publicity and the loss of his liberty interest therein, and to be free from malicious prosecution.

3. The matter in controversy exceeds, exclusive of interest and cost, the sum of $10,000.

PARTIES

4. The plaintiff, NEAL H. DENSMORE, is a citizen of the United States and is a resident of the City of Boca Raton and had been employed by the defendant, the CITY OF BOCA RATON, a municipal corporation, as an electrical inspector within the Building Department within the City of Boca Raton for fifteen years prior to December 18, 1975 when he was discharged from said position. During this entire period of fifteen years, his performance ratings had been evaluated as satisfactory, very satisfactory and exceptional, and his personnel file was that of an exemplary employee.

5. The defendant, the CITY OF BOCA RATON, Florida, is a municipal corporation duly authorized and existing under the laws of the State of Florida.

6. The defendant, DONALD CRAWFORD, at the time of the occurrences hereinafter referred to, was the City Manager of the City of Boca Raton, appointed by the City Council of said city and vested with all the authority empowered upon him by the ordinances of the City of Boca Raton and the laws of the State of Florida. Since the incidences complained of, he

has been dismissed by the City Council. He is sued in his individual and official capacity.

7. Defendant, WILLIAM K. HOWELL, was City Attorney at the time of the occurrences hereinafter described. Since the incidents complained of, he has resigned his position with the City of Boca Raton. He is sued in his individual and official capacity.

8. Defendant, RICHARD SHERER, was, at the time of the occurrences hereinafter described, and presently is, a police officer and a detective with the City of Boca Raton. He is sued in his individual and official capacities.

9. At all material times to this Complaint, all defendants named individually above were acting under the color of the authority given by the laws of the State of Florida and the ordinances, rules and regulations of the State of Florida and defendant city as indicated by their title, their identification, their offices, and official papers of appointment.

10. At all material times the individual defendants named acted separately and in concert, under color and pretense of state law, that is, under the guise of statute, ordinances, regulations, customs and usages of the State of Florida and the defendant city. Each of the individual defendants, separately and in concert, engaged in the illegal conduct hereafter related to the injury and damage of the plaintiff, depriving him of his rights, privileges and immunities secured to him by the Constitution and the laws of the United States, and by the Constitution and laws of the State of Florida.

FACTUAL ALLEGATIONS

11. The defendant, the CITY OF BOCA RATON, by and through its City Council, in October, 1975, commissioned J. J. Reynolds, Esq. and Lawrence Marchbanks, Esq. to perform an investigation of alleged wrongdoings in the Building Department of the City of Boca Raton.

12. On or about December 15, 1975, Reynolds and Marchbanks delivered to the City Council for the defendant, the CITY OF BOCA RATON, a "secret report" hereinafter re-

ferred to as the Reynolds and Marchbanks report which was the result of their alleged investigation into the wrongdoings of the Building Department of the City of Boca Raton.

13. The City Council immediately turned the secret Reynolds and Marchbanks report over to the defendants, DONALD CRAWFORD and WILLIAM K. HOWELL, with the instructions to continue the investigations, to take whatever steps were appropriate as a result of the Reynolds and Marchbanks report, and not to release the report to the press or public, but the same was to remain confidential.

14. As a result of said investigation and the alleged Reynolds and Marchbanks report therefrom, and on the basis of the information contained therein, and before pursuing a reasonable and fair investigation, on or about December 18, 1975, the defendant, DONALD CRAWFORD, with the approval and authority of the City Council of the CITY OF BOCA RATON, terminated the plaintiff's, NEAL H. DENSMORE, employment with the City of Boca Raton.

15. The Defendant, DONALD CRAWFORD, effectuated the plaintiff's, NEAL H. DENSMORE, termination by means of a letter addressed to the plaintiff, NEAL H. DENSMORE, dated December 18, 1975, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "A" which stated in part:

(a) That while employed by the City of Boca Raton, in an official capacity, on that certain construction project in the City of Boca Raton, known as "Boca South", you did conspire to take unlawful compensation.

(b) That while acting in an official capacity as an employee of the City of Boca Raton, on that certain construction site of an apartment building at or about 53rd Street in the City of Boca Raton, you did conspire to take unlawful compensation.

(c) That while acting in an official capacity as an employee of the City of Boca Raton, on that cer-

tain construction site in the City of Boca Raton, known as "Centre Hill Court", you did take unlawful compensation.

(d) That while acting in an official capacity as an employee of the City of Boca Raton, on that certain construction site in the City of Boca Raton, known as "Admiral's Walk", you did take unlawful compensation.

16. On or about December 22, 1975, the defendent, DONALD CRAWFORD, either himself or his lawful authorized agent, released for public dissemination the aforementioned letter addressed to Neal Densmore, plaintiff's Exhibit "A", to the press so that on December 23, 1975, those statements referred to in paragraph 15 hereof were published in the *Boca Raton News* on the front page, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "B"; on or about December 25, 1975, said statements were published in the *Miami Herald*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "C"; on or about December 24, 1975, said statements were published in the *Palm Beach Post*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "D"; on or about December 24, 1975, said statements were published in the *Fort Lauderdale Sun Sentinel*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "E"; on or about December 24, 1975, said statements were published in the *Palm Beach Times*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "F". Furthermore, it is believed by plaintiff that further articles unknown to the plaintiff at this time appeared in other Florida newspapers, and if discovered the plaintiff respectfully requests leave of the Court to amend his Complaint to include those articles.

17. Pursuant to Section 3, Article XIII of the Personnel Rules and Regulations of the City of Boca Raton, Mr. Densmore, on December 22, 1975, by letter delivered that date

repudiated the charges and requested a review before the City Manager. Pursuant to the above referenced section, the City Manager was to set said date and time for review which review was to have been within three days of the request. Section 3, Article XIII of the Personnel Rules and Regulations of the City of Boca Raton, provides as follows, to wit:

> The City Manager shall furnish the employee whom he proposes to remove from the city service with a written statement outlining, in detail, reasons for the proposed removal and the date and time said removal becomes effective. A copy of the above mentioned statement shall also be furnished the Personnel Director. The employee under notice of removal, shall be given three business days in which to reply, to refute charges filed against him or request a review of his case by the City Manager. Such reply and/or request must be made in writing.
>
> The City Manager shall also set a date and time for review of the case if requested which shall be within three business days from the date he received the employee's request for such review, and shall notify the Personnel Director and the employee of such date and time.

18. The review was not held until December 29, 1975 as reflected by that letter of December 23, 1975, from the Personnel Director, Frank D. Schuyler, to the petitioner, a copy of which is attached and made a part hereof as Exhibit "G". On December 29, 1975, the defendant, DONALD CRAWFORD, with the authority, consent, and approval of the City of Boca Raton, held a review with the plaintiff, in public, of the statements of guilt as embodied in the letter of December 18, 1975, plaintiff's Exhibit "A", at which review the defendant, DONALD CRAWFORD, with the authority, consent and approval of the City of Boca Raton, and its mayor and City Council, had invited the press to which the press did attend.

19. On or about December 29, 1975, the plaintiff accompanied with his counsel, attended said review and vehemently objected to the improper and illegal procedure which the city had maintained. Furthermore, the plaintiff, NEAL H. DENSMORE, demanded to know the basis of the charges made against him so that a review could adequately be had so he could properly defend himself accordingly. He further demanded to inspect the secret Reynolds and Marchbanks report so that he could be apprised of the factual basis as to his public discharge and the charges made against him. He further objected to the release of the letter of December 18, 1975, Exhibit "A" and the invitation and attendance of the press to such review.

20. The defendants, DONALD CRAWFORD and WILLIAM K. HOWELL, on behalf of the defendant, the CITY OF BOCA RATON, refused to deliver said report to the plaintiff so that he could properly defend himself, and further refused to advise the plaintiff as to the factual basis of the charges against him. The plaintiff vehemently objected to such procedures and his denial of due process.

21. At said review and on December 29, 1975, the defendant, DONALD CRAWFORD, amended his aforementioned letter of December 18, 1975, so that subparagraph (b) of page 2 of his letter of December 18, 1975 read:

> "That you did solicit to take unlawful compensation from one Louis Strange in connection with the plans for electrical contract work at an apartment at or near 51st Street in Boca Raton, Florida."

by means of a letter addressed to Neal Densmore, dated December 29, 1975, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "H".

22. On December 29, 1975, the defendant, DONALD CRAWFORD, released for public dissemination, the aforementioned letter addressed to Neal Densmore, of December 29, 1975, to the press so that on December 30, 1975, those

statements referred to in paragraph 21 hereof were published in the *Boca Raton News*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "I"; the *Miami Herald*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "J"; the *Palm Beach Times*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "K"; and the *Fort Lauderdale Sun Sentinel*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "L". Furthermore, it is believed by the plaintiff that further articles unknown to the plaintiff at this time appeared in other Florida newspapers and if discovered, the plaintiff respectfully requests leave of the Court to amend his Complaint to include those articles.

23. The statements as referred to in Exhibits "A" through "F" and "H" through "L" inclusive are completely false and unfounded.

24. Pursuant to the Personnel Rules and Regulations of the City of Boca Raton, the plaintiff requested an appeal and hearing before the Civil Service Board.

25. The city on behalf of the Civil Service Board and on advice of the defendants HOWELL and CRAWFORD, refused the plaintiff such a review and further refused the plaintiff of the factual basis of the charges against him or a copy of the Reynolds and Marchbanks report. A copy of the letter to the chairman of the Civil Service Board of January 26, 1976 is attached hereto and made part hereof as plaintiff's Exhibit "M".

26. On February 26, 1976, your plaintiff filed a lawsuit in the Fifteenth Judicial Circuit Court, in and for Palm Beach County in the State of Florida, against the defendant, the CITY OF BOCA RATON and the defendant, DONALD CRAWFORD, alleging defamation and libel and slander. Said suit was subsequently dismissed prior to trial on the basis of "executive privilege" extended to public officers.

27. During the course of discovery in the above entitled

action, the defendants, the CITY OF BOCA RATON, DONALD CRAWFORD and WILLIAM K. HOWELL, were put on notice and obtained knowledge that the original four charges of criminal misconduct contained in the letter of December 18, 1975 as amended in the letter of December 29, 1975, Exhibits "A" and "H" respectively, were unfounded and not factual.

28. The defendants, the CITY OF BOCA RATON, DONALD CRAWFORD, and WILLIAM K. HOWELL, continued to maliciously investigate the plaintiff. The defendant, RICHARD SHERER, a detective with the City of Boca Raton Police Department was assigned fulltime by the defendant, the CITY OF BOCA RATON, to the defendant's, WILLIAM K. HOWELL, City Attorney's office to perform the investigation against your plaintiff.

29. Sometime thereafter, the defendants, the CITY OF BOCA RATON, WILLIAM K. HOWELL, DONALD CRAWFORD, and RICHARD SHERER maliciously caused to be delivered to the State Attorney's office of Palm Beach County, statements from witnesses and a report in regards to a new charge unrelated to the specific four charges listed in the letter of termination of December 18, 1975. The statements and report were maliciously done so that they were incomplete, one-sided, and factually incorrect so as to convince the State Attorney to file charges against your plaintiff. Such charges and report were delivered during the pendancy of the aforereferenced suit of paragraph 28.

30. On or before November 17, 1977, an Information was filed by the State Attorney's office in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, charging the plaintiff with unlawful compensation in violation of Florida Statute 838.016 (1) a felony in the State of Florida. Said information was filed at the insistance of the City of Boca Raton and/or its agents and the defendants DONALD CRAWFORD, WILLIAM K. HOWELL, and/or RICHARD SHERER, and was based upon the maliciously prepared statements and report as aforesaid and further was a new

charge not based upon any of the original four charges contained in the letter of December 18, 1975 as amended in the letter of December 29, 1975, Exhibits "A" and "H" respectively.

31. The plaintiff surrendered himself to the Palm Beach County jail on November 17, 1977 where he was arrested and imprisoned for a period in excess of eight hours on the aforementioned charges.

32. On November 17, 1977, the defendent, the CITY OF BOCA RATON, maliciously called a news conference through the defendants, DONALD CRAWFORD and RICHARD SHERRER, to publically disseminate the fact of the plaintiff's arrest and imprisonment and further, to maliciously damage his good name and reputation in the community. Said articles were published that evening and subsequent morning newspapers.

33. On April 18, 1978, prior to trial, the Honorable William C. Williams, III, dismissed the aforereferenced charges against the plaintiff on the basis that the State was unable to amend its information to allege a proper charge due to a total lack of evidence and thus there was no probable cause for such a proceeding. Attached hereto and made a part hereof as Exhibit "N" is a copy of that order.

CAUSES OF ACTION

34. Paragraphs 1 through 33 are hereby incorporated and made a part of Counts One through Three as though fully set forth herein.

COUNT ONE

35. The actions of the defendants, each and every one of them, violated the Fifth and Fourteenth Amendments to the United States Constitution in that in acting in concert, the defendants deprived the plaintiff of property without due process of law. More specifically, the discharge of the plaintiff from his employment with the attended publicity and denial of the basis of the charges and dismissal and denial of

the opportunity to be heard deprived the plaintiff of the property interest in his employment and the liberty interest therein.

COUNT TWO

36. The actions of the defendants, each and every one of them, violated 42 USCA 1983 in that the defendants conspired to interfere with the plaintiff's Civil Rights as aforesaid by depriving him of his property and liberty interest in his employment.

COUNT THREE

37. The actions of the defendants, each and every one of them, caused the commencement of a criminal action against the plaintiff which was maliciously performed on the defendants' part for which there was a lack of probable cause and which was terminated successfully for the plaintiff.

38. As to Counts One and Two, the plaintiff had been continuously, for fifteen years, an electrical inspector for the City of Boca Raton. Plaintiff depended wholly upon his work as an electrical inspector for the support of himself and his family. As a direct and proximate result of the discharge and attended publicity of the discharge and a denial of his due process, the plaintiff has been exposed to public hatred, contempt, and ridicule; that the untrue statements have been a source of great embarrassment and humiliation to the plaintiff, thereby causing plaintiff to suffer distress of mind and mental anguish, the plaintiff's health has been affected and he has suffered and continues to suffer from nervousness and mental anguish and bodily pain; that the plaintiff's reputation for honesty and integrity has been impaired as well as his standing in his electrical profession and further, the plaintiff has been unable to secure employment; has lost his property interest in his job and career and his liberty interest therein; that the plaintiff has suffered a great wrong and injury in the excess of the sum of $1,000,000 by reason of which plaintiff has been damaged by the defendants in such sum.

39. As to Counts One and Two, the acts of the defendants as aforedescribed were intentionally and maliciously done or done with such recklessness and carelessness as to amount to a wanton disregard to the plaintiff's rights so that the conduct of the defendants is malicious and totally without justification and which by reason thereof the plaintiff is entitled to punitive damages in excess of the sum of $1,000,000.

40. As to Count Three, the plaintiff has been caused great humiliation, physical discomfort and mental anguish and his reputation and good name have been damaged in excess of the sum of $500,000.

41. As to Count Three, the plaintiff has been put to expense in the amount of $10,000 for employment of counsel in connection with the charges brought by the defendant.

42. As to Count Three by reason of the aforementioned acts of the defendant, by and through its agents and employees acting within the scope of employment, plaintiff has suffered a loss of earnings and earning power to his damage in excess of the sum of $500,000.

43. As to Count Three by reason of the willful and malicious acts of the defendants, as set forth above, the plaintiff is entitled to punitive damages in the sum of $1,000,000.

WHEREFORE, the plaintiff respectfully prays the Court to:

1. Take jurisdiction of this cause.

2. Grant compensatory damages in the sum in excess of $1,000,000 for damages sustained on Counts One and Two.

3. Grant compensatory damages in a sum in excess of $1,010,000 for damages sustained on Count Three.

4. Grant punitive damages in a sum in excess of $1,000,000 for damages sustained on Counts One and Two.

5. Grant punitive damages in a sum in excess of $1,000,000 for damages sustained on Count Three.

6. Grant such other relief as the Court deems proper and just.

PLAINTIFF DEMANDS TRIAL BY JURY ON THE ISSUES SO TRIABLE.

/s/ _____
NEAL H. DENSMORE

/s/
RICHARD E. BOSSE
RAPPAPORT AND BOSSE
Squires Building – Suite 203
1300 Nort Federal Highway
Boca Raton, Florida 33432
(305) 368-2200 426-2163

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, this day personally appeared NEAL H. DENSMORE, who first by me being duly sworn says: That he is the Plaintiff in the above-styled cause; that he has read the foregoing Amended Complaint and has personal knowledge of the facts and matters set forth and alleged in it; and that each of the facts and matters set forth and alleged in it; and that each of the facts and matters are true and correct.

SWORN TO AND SUBSCRIBED before me this 16th day of February, 1981.

/s/ _____
NOTARY PUBLIC, STATE OF FLORIDA
At Large

My Commission Expires Oct. 23, 1982
Bondéd by American Fire & Casualty Company

I HEREBY CERTIFY that a copy hereof has been furnished D. CULVER SMITH, III, ESQUIRE, ADAMS, COOGLER, WATSON & SMITH, P.A., Attorneys for defendants, 322 First Street, P.O. Box 2069, West Palm Beach, Florida 33402, this 17th day of February 1981.

RAPPORT AND BOSSE
Attorneys for Plaintiff
Squires Building–Suite 203
1300 North Federal Highway
Boca Raton, Florida 33432

(305) 368-2200

/s/ By: _____
Richard E. Bosse

APPENDIX B

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,	)
Plaintiff,	)
v	)
CITY OF BOCA RATON, FLORIDA: DONALD R. CRAWFORD, individually and as City Manager of the City, WILLIAM K. HOWELL, individually and as City Attorney of the City, RICHARD SHERER, individually and as Police Officer and Detective of the City.	)
Defendants.	)

ANSWER TO AMENDED COMPLAINT

Defendants, CITY OF BOCA RATON, WILLIAM K. HOWELL, and RICHARD SHERER, answer the Plaintiff's Complaint saying:

1. Paragraphs 1, 2, 3, 4, 10, 13, 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29, 30, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, and 43 are denied.

2. Paragraphs 5, 6, 7, 8, 9, 11, 12, 15, 21, and 26 are admitted.

3. Paragraph 31 is neither admitted nor denied as these Defendants are without knowledge of the allegations.

4. All responses given for Paragraphs 1 through 33 are realleged herein in response to Paragraph 34.

AFFIRMATIVE DEFENSES

5. All acts and actions of all Defendants were done in full and complete compliance with all applicable laws.

6. All acts and actions by all Defendants were done in good faith and thus, all Defendants are cloaked with qualified immunity.

7. This action is barred by the Statute of Limitations. Chap. 95, Fla. Stat.

8. This action is barred under the doctrines of res judicata and collateral estoppel.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to RICHARD E. BOSSE, ESQ., Rappaport and Bosse, Squires Building, Suite 203, 1300 North Federal Highway, Boca Raton, Florida 33432; this 20th day of AUGUST, 1981.

ADAMS, COOGLER, WATSON & MERKEL, P.A.
322 First Street, P.O. Box 2069
West Palm Beach, FL 33402
(305) 659-7200

By _____
J. BURKE CULLER, JR.

APPENDIX C

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,	)
Plaintiff,	)
v	)
CITY OF BOCA RATON, FLORIDA: DONALD R. CRAWFORD, individually and as City Manager of the City, WILLIAM K. HOWELL, individually and as City Attorney of the City, RICHARD SHERER, individually and as Police Officer and Detective of the City.	)
Defendants.	)

ANSWER TO AMENDED COMPLAINT BY DEFENDANT DONALD CRAWFORD

Defendant, DONALD CRAWFORD answers the Plaintiff's Amended Complaint saying:

1. Paragraphs 1, 2, 3, 4, 10, 13, 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29, 30, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, and 43 are denied.

2. Paragraphs 5, 6, 7, 8, 9, 11, 12, 15, 21, and 26 are admitted.

3. Paragraph 31 is neither admitted nor denied as these Defendants are without knowledge of the allegations.

4. All responses given for Paragraphs 1 through 33 are realleged herein in response to Paragraph 34.

AFFIRMATIVE DEFENSES

5. All acts and actions of all Defendants were done in full and complete compliance with all applicable laws.

6. All acts and actions by all Defendants were done in good faith and thus, all Defendants are cloaked with qualified immunity.

7. This action is barred by the Statute of Limitations. Chap. 95, Fla.Stat.

8. This action is barred under the doctrines of res judicata and collateral estoppel.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to RICHARD E. BOSSE, ESQ., Rappaport and Bosse, Squires Building, Suite 203, 1300 North Federal Highway, Boca Raton, Florida 33432; this 2nd day of NOVEMBER, 1981,

ADAMS, COOGLER, WATSON & MERKEL, P.A.
322 First Street – P.O. Box 2069
West Palm Beach, Florida 33402
(305) 659-7200

By _____
J. BURKE CULLER, JR.

APPENDIX D

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City,)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City,)
RICHARD SHERER, individually and)
as Police Officer and Detective of the)
City.)
)
Defendants.)

Article XIII, §2, of the Personnel Rules and Regulations of the City of Boca Raton reads as follows:

Grounds for Removal: The City Manager may, for cause, remove any employee in the classified service, however, in no instance may an employee be removed from his position because of political or religious opinions or affiliations, except if the employee has become a member of the Communist Party or has been found in violation of the City's Code of Ethics.

APPENDIX E

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

If the Defendants reasonably believed that they were acting by authority of a valid state law or county rule or regulation, and acted in good faith on the basis of this belief, that their reasonable belief and good faith action constitutes a defense to the Plaintiff's claim, even though the state law or county rule or regulation may have been invalid.

APPENDIX F

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

At a minimum, due process requires that a person have notice and an opportunity to be heard before a property or liberty interest is taken. The fundamental requisite of due process is the opportunity to be heard. The plaintiff must have been heard at a meaningful time in a meaningful manner, appropriate to the nature of the case. It is up to you, the jury, to determine whether under the circumstances of this case, plaintiff received adequate notice and hearing on his termination as to allow him to be heard at a meaningful time in a meaningful manner. In making this determination, you may take into account whether plaintiff had an opportunity to present his side of the story and the fairness and impartiality of the tribunal or tribunals which held the hearing, and any other factor you deem important to plaintiff's right to a fair hearing.

APPENDIX G

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

Does an employee of the City who has received a letter of termination have the right to a *private* review three (3) days from the date the City Manager received the employee's request for review? Does the employee have the right to above review before the press is informed of charges?

Foreman Georgia Tylander

/s/ Georgia Tylander

APPENDIX H

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

Court Exhibit 3

Your first set of questions Court Exhibit 1 seems to ask: what type of hearing is a city employee entitled to and in what manner should this hearing be held before he is terminated (or, before he is deprived of a liberty or a property interest, as those interests are defined in the Court's instructions).

Where the dismissal of a government employee is accompanied by a charge against him that might seriously damage his standing or associations in his community, the employee is entitled to reasonable notice of the charges made against him and the opportunity for a hearing at which the employee could refute the charges and publicly clear his name. The hearing must be held at a meaningful time and in a meaningful manner. What is meaningful under the circumstances of the case is for you as judges of the facts to determine.

Thus, whether the review should be private or public, or whether the press should be informed at this or that time, and at what time the hearing should be held – – are all questions for you to decide.

APPENDIX I

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

VERDICT

We, the jury, return the following verdict:

1. Do you find that the Defendant, Donald Crawford, is liable to the Plaintiff, Neal Densmore, for the violation of the Plaintiff's federal constitutional rights?

YES _____ NO X

2. Do you find that the Defendant, William K. Howell, is liable to the Plaintiff, Neal Densmore, for the violation of the Plaintiff's federal constitutional rights?

YES _____ NO X

3. Do you find that the Defendant, City of Boca Raton, is liable to the Plaintiff, Neal Densmore, for the violation of the Plaintiff's federal constitutional rights?

YES _____ NO X

4. Do you find that the Defendants are liable to the Plaintiff, Neal Densmore, for conspiring to violate the Plaintiff's federal constitutional rights?

YES _____ NO X

If your answers to Questions 1 through 4 are all "NO", then go no further than to date and sign this verdict form. If any of your answers to Questions 1 through 4 are "YES", then answer Questions 5 and 6.

5. Do you find that the Defendant, Donald Crawford, acted in "good faith" in his handling of the termination of the Plaintiff's employment with the City of Boca Raton?

YES _____ NO _____

6. Do you find that the Defendant, William K. Howell, acted in "good faith" in his handling of the termination of the Plaintiff's employment with the City of Boca Raton?

YES _____ NO _____

7. What is the total amount, in dollars, of Plaintiff, Neal Densmore's, damages caused by the incident in question?

$ _____ .

SO SAY WE ALL this 24 day of February, 1983.

/s/ _____
Foreperson

APPENDIX J

JUDGMENT ON JURY VERDICT
No. 79-8375-CIV-JCP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

This action came on for trial before the Court and a jury, Honorable JAMES C. PAINE, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged

The plaintiff take nothing and that the action be dismissed on the merits.

Dated at West Palm Beach, Florida, this 2nd day of March, 1983.

/s/_____
Clerk of Court
SVAVA RINGHEIM, DEPUTY CLERK

cc: Richard E. Bosse, Esq.
J. Burke Culler, Jr., Esq.

APPENDIX K

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-5341

D.C. Docket No. 79-08375–CIV–JCP

NEAL H. DENSMORE,

Plaintiff-Appellant,

versus

CITY OF BOCA RATON, FLORIDA,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Florida

(October 15, 1984)

Before FAY and VANCE, Circuit Judges, and MacMahon*, District Judge.

PER CURIAM:

affirmed. See Circuit Rule 25.

"Costs taxed against plaintiff-appellant."

---

* Honorable Lloyd F. MacMahon, U. S. District Judge for the Southern District of New York, sitting by designation.

Judgment Entered: October 15, 1984
For the Court: Spencer D. Mercer, Clerk

/s/ By: _____
Deputy Clerk

ISSUED AS MANDATE: DEC 06 1984

APPENDIX L

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 83-5341

NEAL H. DENSMORE,

Plaintiff-Appellant,

versus

CITY OF BOCA RATON, FLORIDA, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion October 15 , 11 Cir., 1984 F. 2d).

(NOV 21 1984)

Before FAY and VANCE, Circuit Judges, and MacMahon*, District Judge.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ _____

United States Circuit Judge

*Honorable Lloyd F. MacMahon, U.S. District Judge for the Southern District of New York, sitting by designation.

Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

(3)

No. 84-1319

In The
Supreme Court of the United States
October Term, 1984

NEAL H. DENSMORE,

Petitioner,

v.

CITY OF BOCA RATON, FLORIDA; DONALD R. CRAWFORD, individualy and as City Manager of the City; WILLIAM K. HOWELL, individually and as City Attorney for the City,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. WHETHER IT IS A DENIAL OF DUE PROCESS OF LAW PRESCRIBED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION FOR A GOVERNMENT EMPLOYEE TO BE DISCHARGED FROM PUBLIC EMPLOYMENT WITHOUT A PRETERMINATION HEARING WHEN THE INTEREST OF THE HEALTH, SAFETY AND WELFARE OF THE PEOPLE IS JEOPARDIZED?

2. WHETHER THE DEFENSE OF GOOD FAITH IS NOT AVAILABLE TO A GOVERNMENT IN A CIVIL RIGHTS CASE BROUGHT UNDER 42 U.S.C. Sec. 1983 AND WHETHER THE DEFENSE OF GOOD FAITH IS AVAILABLE TO GOVERNMENT OFFICIALS WHERE THEIR ACTS CONTRAVENE SETTLED, INDISPUTABLE LAW OR WHERE THEY ACT ARBITRARY, FANCIFUL OR CLEARLY UNREASONABLE?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
INDEX OF AUTHORITIES	iii
JURISDICTION	1
PREFACE	1
MUNICIPAL RULES AND REGULATIONS INVOLVED	1
STATEMENT OF THE CASE	3
SUMMARY OF THE ARGUMENT	8
ARGUMENT	8
CONCLUSION	14
APPENDIX A—Reynolds & Marchbanks Report	App. 1
APPENDIX B—12/18/75 Termination Letter	App. 9
APPENDIX C—Crawford's transcript testimony	App. 12
APPENDIX D—12/22/75 Densmore's letter to Crawford	App. 20
APPENDIX E—12/23/75 Schuyler's letter to Densmore	App. 22
APPENDIX F—12/31/75 Crawford's letter to Densmore	App. 24
APPENDIX G—1/12/76 Letter from Bosse and Densmore seeking Civil Service Board review	App. 27
APPENDIX H—1/12/76 Letter from Schuyler to Crawford	App. 29
APPENDIX I—Jury Verdict	App. 31
APPENDIX J—Judgment	App. 33
APPENDIX K—11th Circuit Court of Appeals Per Curiam Affirmance Opinion	App. 34

TABLE OF CONTENTS—Continued

Page

APPENDIX L—Article XIII, Personnel Rules and Regulations of City of Boca Raton ..... App. 36

APPENDIX M—Article XXIV, Personnel Rules and Regulations of the City of Boca Raton ..... App. 48

INDEX OF AUTHORITIES

CASES — PAGE

Board of Regents v. Roth, 408 U.S. 564, 569-70, 570 n. 7, 92 S.Ct. 2701, 2705 n. 7, 33 L.Ed.2d n. 548 (1972) 12

Cleveland Board of Education v. Loudermill, 53 U.S.L.W. 4306 (U.S. March 19, 1985) 11, 13

Hatch v. Goerke, 502 F.2d 1189, 1194-95 (10th Cir. 1974) 12

Miller v. City of Mission, Kansas, 705 F.2d 368 (10th Cir. 1983) 8, 12

OTHER AUTHORITIES

28 U.S.C. Sec. 1254(1) 1

42 U.S.C. Sec. 1983 1

Title 42 U.S. Code Secs. 1983 and 1985 7

Fed. Rule Civ. Proc. 12(b)(6) 14

Personnel Rules and Regulations of City of Boca Raton, Article XIII 1, 2, 9, 10

Personnel Rules and Regulations of City of Boca Raton, Article XXIV 6

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

PREFACE

For purposes of this brief the parties will be referred to as follows:

a. Petitioner, Neal H. Densmore—Densmore or Petitioner

b. Respondent, City of Boca Raton—City of Boca Raton

c. Respondent, William K. Howell—Howell

d. Respondents, collectively—Respondents

MUNICIPAL RULES AND REGULATIONS INVOLVED

PERSONNEL RULES AND REGULATIONS OF THE CITY OF BOCA RATON, FLORIDA, ARTICLE XIII, SEC. 2 and 3:

REMOVAL OF EMPLOYEES

The City Manager may, at any time, suspend, demote, transfer or dismiss any employee in the classified service for any cause which will promote the efficiency of the City service, but only in accordance with these rules and regulations.

Section 1. SUSPENSION ....

Section 2. GROUNDS FOR REMOVAL. The City Manager may, for cause, remove any employee in the classified service, however, in no instance may an employee be removed from his position because of political or religious opinions or affiliations, except if the employee has become a member of the Communist Party or has been found in violation of the City's Code of Ethics.

The following may be considered grounds for removal based on the gravity of the offense, however, removal may be made for causes other than those enumerated:

1. Has been convicted of a criminal offense or misdemeanor involving moral turpitude; or has been guilty of an immoral or criminal act.

2. Has willfully violated any of the provisions of the City Charter or these Rules, or has attempted to, or does commit an act or acts intended to nullify or mitigate any of the provisions thereof.

3. Has violated any lawful or reasonable order or regulation, or failed to obey any reasonable or lawful direction made and given him by a superior where such violation or failure to obey has, or might have, resulted in loss or injury to the City of Boca Raton, the public, or persons or property in the custody of the City.

4. Has been guilty of conduct unbecoming an employee of the City of Boca Raton.

10. Is careless or negligent of the property of the City of Boca Raton; or who steals, or misuses any equipment, materials, property, or other things of value belonging to the City of Boca Raton.

13. Has taken any fee, gift, or other valuable thing in the course of his work or in connection therewith for his personal use from any firm or corporation when such fee, gift or other valuable consideration is accepted with the understanding

that the donor shall, or actually does, receive favors and service not customarily accorded the general public . . . .

Section 3. REMOVAL OF EMPLOYEES. The City Manager shall furnish the employee whom he proposes to remove from the City service with a written statement outlining, in detail, reasons for the proposed removal and the date and time such removal becomes effective . . . The employee under notice of removal shall be given three (3) business days in which to reply, to refute charges filed against him or request a review of his case by the City Manager . . . .

In no case shall an employee in the classified service be dismissed with less than one (1) week's notice; except in cases where the employee's flagrant disregard of his position, these rules, or the health, safety and welfare of the public indicate that he should be immediately separated from the City service.

STATEMENT OF THE CASE

Prior to December, 1975, DENSMORE had been an electrical inspector with the Boca Raton Building Department for fifteen (15) years. As such, under the Personnel Rules and Regulations of Boca Raton, he was considered an employee in the classified service who could not be dismissed without cause.

DENSMORE was terminated on December 18, 1975 by letter received from CRAWFORD. Appendix A. DENSMORE was terminated for violating the Rules and Regulations of the CITY OF BOCA RATON. The termination letter was predicated upon the Reynolds and

Marchbanks' report which emanated from Reynolds and Marchbanks' investigation of alleged corruption in the building department of the City of Boca Raton. Appendix A.

DENSMORE was terminated by CRAWFORD without a pretermination hearing because CRAWFORD felt the health, safety and welfare of the public indicated that DENSMORE be immediately separated from the City's service. Appendix B and C.

Article XIII, Personnel Rules and Regulations of the City of Boca Raton provides, in part:

> REMOVAL OF EMPLOYEES
>
> The City Manager may, at any time, suspend, demote, transfer or dismiss any employee in the classified service for any cause which will promote the efficiency of the City service, but only in accordance with these rules and regulations.
>
> Section 1. SUSPENSION . . . .
>
> Section 2. GROUNDS FOR REMOVAL. The City Manager may, for cause, remove any employee in the classified service, however, in no instance may an employee be removed from his position because of political or religious opinions or affiliations, except if the employee has become a member of the Communist Party or has been found in violation of the City's Code of Ethics.
>
> The following may be considered grounds for removal based on the gravity of the offense, however, removal may be made for cause other than those enumerated:
>
> 1. Has been convicted of a criminal offense or misdemeanor involving moral turpitude; or has been guilty of an immoral or criminal act.

2. Has willfully violated any of the provisions of the City Charter or these Rules, or has attempted to, or does commit an act or acts intended to nullify or mitigate any of the provisions thereof.

3. Has violated any lawful or reasonable order or regulations, or failed to obey any reasonable or lawful direction made and given him by a superior where such violation or failure to obey has, or might have, resulted in loss or injury to the City of Boca Raton, the public, or persons or property in the custody of the City.

4. Has been guilty of conduct unbecoming an employee of the City of Boca Raton.

10. Is careless or negligent of the property of the City of Boca Raton; or who steals, or misuses any equipment, materials, property, or other things of value belonging to the City of Boca Raton.

13. Has taken any fee, gift, or other valuable thing in the course of his work or in connection therewith for his personal use from any firm or corporation when such fee, gift or other valuable consideration is accepted with the understanding that the donor shall, or actually does, receive favors and service not customarily accorded the general public . . . .

Section 3. REMOVAL OF EMPLOYEES. The City Manager shall furnish the employee whom he proposes to remove from the City service with a written statement outlining, in detail, reasons for the proposed removal and the date and time such removal becomes effective . . . The employee under notice of removal shall be given three (3) business days in which to reply, to refute charges filed against him or request a review of his case by the City Manager . . . .

In no case shall an employee in the classified service be dismissed with less than one (1) week's notice; except in cases where the employee's flagrant

> disregard of his position, these rules, or the health, safety and welfare of the public indicate that he should be immediately separated from the City service. Appendix L.

DENSMORE timely filed a repudiation of the charges and a request for review of his termination before the city manager. Appendix D and E. A hearing was held during which DENSMORE denied the allegations filed against him and demanded additional information concerning the charges against him contained in the December 15, 1975 termination letter. Subsequent to this review, CRAWFORD notified DENSMORE by letter that CRAWFORD's decision concerning DENSMORE's termination was unchanged. Appendix F.

Article XXIV of the Rules and Regulations provides, in part:

> APPEAL TO THE CIVIL SERVICE BOARD
>
> All appeals to the Civil Service Board shall be governed by the provisions of the charter of the City of Boca Raton, and the Rules of Appeal as follows:
>
> Section 1. PROCEDURE FOR APPEAL. Upon the suspension demotion or dismissal of any full-time employee in the classified service, the City Manager shall, within twenty-four (24) hours, give the affected employee a written statement of the reasons for such suspension, demotion or dismissal and shall immediately file a copy thereof with the Civil Service Board.
>
> If the employee desires he may, within seven (7) days after such suspension, demotion or dismissal, file a request for a hearing before the Board, setting forth in detail in his petition, the basis of his appeal. . . . Appendix M.

DENSMORE failed to timely request a Civil Service Board review. Appendix G. His letter requesting a re-

view was filed on January 12, 1976, a full three days after the running of the seven day time period. The Civil Service Board determined that having failed to timely file, DENSMORE waived his right to review, and thus, DENSMORE's termination was final. Appendix H.

During the ongoing investigation of the building department, statements from various witnesses were taken in an attempt to clear up the allegations of corruption. The fruit of these labors confirmed that CRAWFORD's actions in terminating DENSMORE immediately, were justified.

Subsequent to his termination, DENSMORE filed an action in United States District Court for the Southern District of Florida, for compensatory and punitive damages alleging violations of his constitutional rights secured by Title 42 United States Code Section 1983 and 1985. DENSMORE specifically alleged that the CITY OF BOCA RATON, CRAWFORD and HOWELL deprived him of a property and liberty interest in his job without due process of law. CRAWFORD and HOWELL affirmatively pled the defense of good faith immunity.

This case was heard before the Court and a jury and the jury returned a special verdict, finding that the CITY OF BOCA RATON, CRAWFORD and HOWELL, did not violate DENSMORE's federal constitutional rights, nor did they conspire to violate DENSMORE's constitutional rights. Appendix I.

DENSMORE filed Motions for Judgment Not Withstanding the Verdict and For New Trial which were denied. A judgment for the jury's verdict was entered against DENSMORE. Appendix J. DENSMORE ap-

pealed to the Eleventh Circuit Court of Appeals which per curiam affirmed the jury verdict. Appendix K.

SUMMARY OF THE ARGUMENT

The Personnel Rules and Regulations of the City of Boca Raton clearly provide that an employee in the classified service cannot be dismissed with less than one week's notice, except in cases where the employee's flagrant disregard of his position, these rules, or the health, safety and welfare of the public indicate that he should be immediately separated from the City service.

The issue of good faith immunity was not considered or reached by the jury, as such, any error would be harmless.

ARGUMENT

Petitioner seeks a review of his case in order to establish his right, as a governmental employee, to a pre-termination hearing which is protected by the Fourteenth Amendment to the United States Constitution. [Petitioner's Brief Page 11]. The Petition for Certiorari predicates its argument upon a conflict with *Miller v. City of Mission, Kansas,* 705 F.2d 368 (10th Cir. 1983). There exists no conflict between *Miller* and this case.

The Personnel Rules and Regulations of the CITY OF BOCA RATON clearly provide a classified employee

the right to a pretermination hearing, except in emergency situations. It is undisputed that Petitioner was a classified employee.

ARTICLE XIII provides, in part:

> REMOVAL OF EMPLOYEES
>
> The City Manager may, at any time, suspend, demote, transfer or dismiss any employee in the classified service for any cause which will promote the efficiency of the City service, but only in accordance with these rules and regulations.
>
> Section 1. SUSPENSION . . . .
>
> Section 2. GROUNDS FOR REMOVAL. The City Manager may, for cause, remove any employee in the classified service, however, in no instance may an employee be removed from his position because of political or religious opinions or affiliations, except if the employee has become a member of the Communist Party or has been found in violation of the City's Code of Ethics.
>
> The following may be considered grounds for removal based on the gravity of the offense, however, removal may be made for causes other than those enumerated. . . .
>
> 1. Has been convicted of a criminal offense or misdemeanor involving moral turpitude; or has been guilty of an immoral or criminal act.
>
> 2. Has willfully violated any of the provisions of the City Charter or these Rules, or has attempted to, or does commit an act or acts intended to nullify or mitigate any of the provisions thereof.
>
> 3. Has violated any lawful or reasonable order or regulation, or failed to obey any reasonable or lawful direction made and given him by a

superior where such violation or failure to obey has, or might have, resulted in loss or injury to the City of Boca Raton, the public, or persons or property in the custody of the City.

4. Has been guilty of conduct unbecoming an employee of the City of Boca Raton.

10. Is careless or negligent of the property of the City of Boca Raton; or who steals, or misuses any equipment, materials, property, or other things of value belonging to the City of Boca Raton.

13. Has taken any fee, gift, or other valuable thing in the course of his work or in connection therewith for his personal use from any firm or corporation when such fee, gift or other valuable consideration is accepted with the understanding that the donor shall, or actually does, receive favors and service not custoamrily accorded the general public. . . .

Section 3. REMOVAL OF EMPLOYEES. The City Manager shall furnish the employee whom he proposes to remove from the City service with a written statement outlining, in detail, reasons for the proposed removal and the date and time such removal becomes effective. . . . The employee under notice of removal shall be given three (3) business days in which to reply, to refute charges filed against him or request a review of his case by the City Manager. Such reply and/or request for review must be made in writing.

In no case shall an employee in the classified service be dismissed with less than one (1) week's notice; except in cases where the employee's flagrant disregard of his position, these rules, or the health, safety and welfare of the public indicate that he should be immediately separated from the City service. Appendix L.

Thus, the CITY OF BOCA RATON protected its governmental employees' constitutional rights to a pretermination hearing when it promulgated and enacted its personnel rules and regulations. This the CITY OF BOCA RATON provided in 1975, a full decade before this Court mandated such a right in *Cleveland Board of Education v. Loudermill,* 53 U.S.L.W. 4306 (U.S. March 19, 1985).

There exists few governmental interests greater than protecting the health, safety and welfare of the public which that government has been entrusted to protect. This was precisely the situation facing the CITY OF BOCA RATON and its employees when they terminated DENSMORE without a pretermination hearing.

Petitioner advances that Respondents did not raise the emergency situation position until its argument in the Court of Appeals. [Petitioner's Brief Page 7]. This is incorrect! The December 15, 1975, termination letter itself specifically states:

> This termination is immediate, pursuant to the forgoing Sec. 3, in the interest of the health, safety and welfare of the people. Appendix L.

Additionally, the existence of an emergency situation that warrants an immediate termination without a hearing, is not an affirmative defense which must be pled in order to be an issue for determination for the trier of fact. In fact, the jury could have found that the situation was not an emergency and found for Petitioner, but they did not.

Petitioner also advances that this position was not presented to the jury through testimony, nor was it ar-

gued. [Petitioner's Brief Page 7]. This is clearly incorrect! CRAWFORD, who was responsible for the termination of City employees, testified that DENSMORE was terminated with less than one week's notice because the health, safety and welfare of the public indicated that DENSMORE should be immediately separated from the City service. Appendix C.

In *Miller v. City of Mission, Kansas,* 705 F.2d 368 (10th Cir. 1983), the Court stated:

> Due process also requires that one be given notice of the charges against him a reasonable time before the hearing is to take place. . . .
>
> Moreover, except in emergency situations, due process requires that the hearing be held before termination becomes effective. *Board of Regents v. Roth,* 408 U.S. 564, 569-70, 570 n. 7, 92 S.Ct. 2701, 2705 n. 7, 33 L.Ed.2d n. 548 (1972); see also *Hatch v. Goerke,* 502 F.2d 1189, 1194-95 (10th Cir. 1974). 705 F.2d at 372.

Article XIII of the Personnel Rules and Regulations of the CITY OF BOCA RATON clearly meets this standard.

Importantly, DENSMORE was offered the procedural due process opportunity to respond to the charges in the December 15, 1975, termination letter and challenge his dismissal.

The rules and regulations of the CITY OF BOCA RATON provide a constitutional post-termination hearing and review procedure. In addition to Article XIII, REMOVAL OF EMPLOYEES, which provides for a review by the City Manager of the charges; Article XXIV, APPEAL TO THE CIVIL SERVICE BOARD, provides, in part:

APPEALS TO THE CIVIL SERVICE BOARD

All appeals to the Civil Service Board shall be governed by the provisions of the charter of the City of Boca Raton, Florida and Rules of Appeal as follow:

> Section 1. PROCEDURE FOR APPEAL. Upon the suspension, demotion or dismissal of any full-time employee in the classified service, the City Manager shall, within twenty-four (24) hours, give the affected employee a written statement of the reasons for such suspension, demotion or dismissal and shall immediately file a copy thereof with the Civil Service Board.
>
> If the employee desires he may, within seven (7) days after such suspension, demotion, or dismissal, file a request for a hearing before the Board, setting forth in detail in his petition, the basis of his appeal. Appendix M.

The Personnel Rules and Regulations of the CITY OF BOCA RATON clearly protect its' governmental employees' constitutional rights by affording them both pretermination and post-termination opportunities for review.

Recently, this Court in *Cleveland Board of Education v. Loudermill,* 53 U.S.L.W. 4306 (U.S. March 19, 1985) stated:

> We conclude that the process that is due is provided by pretermination *opportunity* to respond, coupled with the post-termination procedures as provided by the Ohio statute. [Emphasis added].

Yet, the *Cleveland Board of Education* case is distinguishable from the case at bar in that the Ohio statute, Sec. 124.34, did not, in any circumstance, provide an opportunity for a pretermination hearing, unlike the Per-

sonnel Rules and Regulations of the CITY OF BOCA RATON.

It is further distinguishable in that both LAUDERMILL's and DONNELLY's cases were dismissed by the District Court for failure to state a claim on which relief could be granted. See Fed. Rule Civ. Proc. 12(b) (6). 53 U.S.L.W. at 4307. The case at bar arises out of a jury verdict and a Per Curiam Affirmance from the Eleventh Circuit Court of Appeals. Appendix I and K.

Petitioner also raises the issue of whether the defense of good faith is available to a government in a civil rights case or available to governmental officials where their acts contravene settled, indisputable law or where they act arbitrary, fanciful or clearly unreasonable. Yet, a simple review of the jury verdict clearly indicates that the jury in this case did not reach the issue of good faith, and as such, assuming arguendo the instructions were incorrect or erroneous, it was harmless error. Appendix I.

CONCLUSION

Based upon the authorities and arguments advanced, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

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December 15, 1975

MEMORANDUM

TO: Byrd Marshall, Mayor, and City Council Members

FROM: Lawrence J. Marshbanks and Jay J. Reynolds

RE: INVESTIGATION FINDINGS

Pursuant to the direction of the City Council we have investigated various departments of the City based upon information which we received from a fellow member of the Bar in Palm Beach County. The scope of this investigation was a broad one and throughout the course of the investigation this office has interviewed approximately twenty-five (25) different individuals.

We find, that based upon the evidence and the summary of testimony as hereinafter set forth, the evidence would lead reasonable men to believe that probable cause exists to bring charges against the following named individuals:

1. Neil Dinsmore, Building Inspector
2. Harold Zimmerman, Building Inspector
3. Ralph Long, Building Inspector

I. NEIL DINSMORE:

With respect to Neil Dinsmore, the evidence and testimony reveal that probable cause exists to levy the charges of conspiracy to take unlawful compensation; taking unlawful compensation; and conflict of interest.

[Memorandum December 15, 1975 page two]

A. Facts

Mr. John Mills, a General Electrical Contractor having his principal place in Delray Beach, Florida, will testify to the effect that while working on the electrical installations and other matters concerning the project known as Boca South in the City of Boca Raton, a condominium project, that he was advised by his administrative personnel who were then working on the project, that Neil Dinsmore requested the sum of $2,000.00 as personal payment to him for approval of the electrical work on the project. Mr. Dinsmore indicated that unless the $2,000.00 payment was forthcoming that the electrical contract work on the project would not be approved. This information was relayed to John Mills through two individuals, Mr. Tom Henry and Mr. Zeke Kimbrell, both witnesses being residents of the City of Delray Beach.

Mr. Tom Henry, when questioned by this office, responded that he did not remember. Mr. Zeke Kimbrell, although he has testified that he was aware of the situation, reports that he is not the one that conveyed the information to John Mills. Mills, upon re-examination, did and will testify that Tom Henry was the one who passed the information to him. We are of the opinion that if Henry were to be placed on the stand and subjected to

rigid cross-examination plus faced with the possibility of perjury, he would come forward to testify as to his involvement in the matter. In any event, John Mills will testify that he did not pay the money and in fact, conveyed a message of his refusal to pay same to Neil Dinsmore through the emissary, Mr. Tom Henry. Mills will testify to the fact that he was somewhat incredulous about this demand by Dinsmore and he passed this information along to his nephew who is employed at his place of business, said nephew's name being Larry Pendergrast.

Mr. Pendergrast will testify to the effect that he, in an attempt to confirm, if indeed Dinsmore's demand was a serious one, met with Mr. Ralph Long of the City of Boca Raton. In a luncheon meeting at Streb's Restaurant, Mr. Pendergrast will testify that Mr. Long advised him that he himself would not take any money. However, Mr. Long continued that Neil Dinsmore would certainly take a bribe and reconfirmed the seriousness of the previous demand of payment. John Mills' refusal to pay this sum [Memorandum December 15, 1975 page three] resulted in the payment of the additional sum of $6,000 to pass the so called "Dinsmore code". Mills claims that the payment of this $6,000.00 extra was unnecessary and in fact punitive in nature because he did not make pay offs.

II. NEIL DINSMORE and RALPH LONG:

Approximately eighteen months ago an electrician by the name of Lewis Strange, who lives in Pompano Beach and frequently conducts business in the City of Boca Raton, was approached by Mr. Ralph Long while working on the Civic Center Plaza construction site. At that time, Mr. Long gave to Mr. Strange plans for the construction of an apartment building at or about 51st Street in the

City of Boca Raton. These plans that were given to Mr. Strange had nothing to do with City inspection of that site, but were merely given to Mr. Strange for him to work up and bid on the job. It was Mr. Strange's understanding, and he will so testify, that Mr. Long had been given these plans for the benefit of the contractor on that particular job.

Mr. Strange will testify that after having reviewed the plans, in preparation of submitting a bid on same, he was confronted by Neil Dinsmore. Dinsmore reviewed the plans and the bid and advised Strange that the sum of $10.00 to $15.00 per apartment unit should be added on to the amount of the bid as payment to him and inferentially, Ralph Long. The payment as mentioned above was consideration for the plans but, also to insure that the job was inspected and approved in an expeditious manner. At that point, Strange will testify that he refused to submit the bids and proceeded no further with the situation.

III. NIEL DINSMORE and RALPH LONG:

Mr. Zeke Kimbrell, as hereinabove previously mentioned, will testify that while working on the Centre Hill project in the City of Boca Raton, he provided directly to Mr. Neil Dinsmore a bottle of the finest scotch on a weekly basis.

[Memorandum December 15, 1975 page four]

That in addition thereto, Kimbrell will testify that it was a matter of general knowledge at this particular construction site that Neil Dinsmore was to receive the sum of $1,000.00; $500.00 from the owner and developer, an in-

dividual by the name of John Macari, and $500.00 from the electrical subcontractor. We have not been able to contact John Macari. He is rumored to be in North Caroline and we have not been able to locate the electrical subcontractor.

Kimbrell will further testify that prior to his making the gratuities, and prior to the rumored pay-off, as above mentioned, Centre Hill was plagued with inspection problems. That, thereafter, everything went smoothly on the project and that all inspections were approved expeditiously.

Additionally, Mr. Zeke Kimbrell will testify that in addition to the gratuities as hereinabove mentioned, extended to Neil Dinsmore, on numerous occasions during this same construction project, he was approached by Mr. Ralph Long and pursuant to said discussions did in fact deliver building materials, supplies, and other goods to a site next to the construction trailer where Mr. Long or his son would pick up same after 5:00 p.m. in the evening.

With regard to the Centre Hill development project, Kimbrell will testify that while attempting to determine the strength of the patios on all floors above ground level, 300 lbs. of cement blocks were placed on a patio to determine its strength. The witness will testify that the patio collapsed. He stated that to his knowledge no steel was placed to reinforce those patios, and that the same patios were approved by the building department of the City of Boca Raton.

IV. NEIL DINSMORE:

Although this has not yet been substantiated, Mr. John Morey has testified and will testify that he and others personally witnessed Neil Dinsmore receiving a gratuity of $20.00 on more than one occasion from the guard at the gate to Admirals Walk Condominium here in Boca Raton, while construction was in progress. Morey will testify to the effect that at that time Dinsmore related that the $20.00 gratuity was paid on a weekly basis.

[Memorandum December 15, 1975 page five]

V. HAROLD ZIMMERMAN:

There is sufficient evidence, both documentary (as attached) as well as testimony, to indicate that Mr. Zimmerman operated as a general contractor without a license on a specific construction project here in the City of Boca Raton. Additionally, Zimmerman on behalf of the City inspected the project in which he had a monetary interest and did approve all of said construction as related to at least the plumbing. This particular construction project was known as Boca Hills Apartments. All of said hereinabove actions are in controvention of Section 102.4 of the Southern Standard Building Code, Code of Ordinances, City of Boca Raton. The hereinabove facts can further be supported by the direct testimony of Mr. Morey who will further testify to the effect that he was a sub-contractor and employee of Zimmerman when the latter was acting as a general contractor on the Boca Hills job.

In addition thereto, Mr. Morey will further testify to the fact that on more than one occasion he accompanied Zimmerman to the security gate at Admirals Walk Con-

dominium in Zimmerman's personal automobile, and on other occasions in a City-owned automobile. That these visits were made during construction of Admirals Walk Condominium. That on said visits, Mr. Zimmerman was given a white envelope by the guard on the gate. Mr. Morey wil' further testify that Zipperman, upon opening the envelope, extracted a twenty dollar bill and threw the envelope on the fllor board. Morey in our interview added that he said something to this effect, "that's not a bad job you have here'' at which time Mr. Morey recollects that Zimmerman said, "Yeah, you bet your life. Why don't you get one, too?'' Finally, Morey will testify that he was concerned about taking and passing the Master's Test for air conditioning which is administered by the City of Boca Raton. Morey indicated this concern to Zimmerman, and the latter indicated that there was nothing to be concerned about. Zimmerman at this point asked Morey for Seventy-Five Dollars which sum was paid to Zimmerman according to Mr. Morey's testimony. Mr. Morey was supplied with a copy of the test and all answers thereto by Zimmerman. Mr. Morey then took the test and stated that he only missed one or two questions. The test as given to Mr. Morey is in our possession, and and will be supplied to the appropriate individual upon request.

[Memorandum December 15, 1975 page six]

Although further evidence has been uncovered, said evidence does not directly relate to a present employee of the City of Boca Raton, in light of the fact that the jurisdiction of this City probably does not reach to said former employees. This office has not related herein the

evidence which has been secured in reference to these particular individuals.

This report is only intended to be a summarization of the evidence which we have received, some of which has been taken down by note of the attorneys involved as well as recorded on tape. The entire working file of this office is available for inspection, and, of course, our further cooperation is extended.

/s/ Lawrence J. Marshbanks

/s/ Jay J. Reynolds

APPENDIX B

Defendant's Exhibit D-15 P-6

December 18, 1975

Mr. Neal Densmore
Building Inspector
City of Boca Raton
Boca Raton, Florida 33432

RE: Termination of Employment

Dear Mr. Densmore:

Effective at 5:00 p.m., Thursday, December 18, 1975, your employment with the City of Boca Raton is terminated.

This termination is made necessary for violation of the following rules of Article XIII, Section 2 of the Personnel Rules and Regulations of the City of Boca Raton, Florida:

1. You have been guilty of one or more immoral or criminal acts. (Rule 1)
2. You have wilfully violated provisions of the City Charter or the said Rules, or have attempted to, or have committed an act or acts intended to nullify or mitigate any of the provisions thereof. (Rule 2)
3. You have violated lawful or reasonable orders or regulations or failed to obey reasonable or lawful directions made and given you by a superior where such violation or failure to obey has, or might have, resulted in loss or injury to the City of Boca Raton, the public, or persons or property in the custody of the City. (Rule 3)
4. You have been guilty of conduct unbecoming an employee of the City of Boca Raton. (Rule 4)
5. You have been careless or negligent of the property of the City of Boca Raton; or have stolen or misused equipment, materials, property, or other

things of value belonging to the City of Boca Raton. (Rule 10)

6. You have taken fees, gifts, or other valuable things in the course of your work or in connection therewith for your personal use from persons, firms or corporations when such fee, gift or other valuable consideration was accepted with the understanding that the donor shall, or actually does, receive favors and service not customarily accorded the general public. (Rule 13)

Pursuant to Article XIII, Section 3 of the Personnel Rules and Regulations, you have three (3) business days in which to reply, to refute charges filed against you, or request a review of your case by the City Manager. Such reply and/or request for review must be made in writing.

This termination is immediate, pursuant to the foregoing Section 3, in the interest of the health, safety and welfare of the people.

The specific details upon which the hereinabove violations are based are as follows:

a. While employed by the City of Boca Raton in an official capacity, on that certain construction project in the City of Boca Raton known as "Boca South", you did conspire to take unlawful compensation.

b. That while acting in an official capacity as an employee of the City of Boca Raton, on that certain construction site of an apartment building at or about 51st Street in the City of Boca Raton, you did conspire to take unlawful compensation.

c. That while acting in an official capacity as an employee of the City of Boca Raton, on that certain construction site in the City of Boca Raton known as "Centre Hill Court", you did take unlawful compensation.

d. That while acting in an official capacity as an employee of the City of Boca Raton, on that certain construction site in the City of Boca Raton known as "Admiral's Walk," you did take unlawful compensation.

Very truly yours,

/s/ Donald D. Crawford
City Manager

DDC:djl

cc: Personnel File
City Attorney

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case No.: 79-8375-Civ-JCP

NEAL DENSMORE,

Plaintiff,

vs.

CITY OF BOCA RATON, FLORIDA; DONALD CRAWFORD, individually and as City Manager of the City; WILLIAM K. HOWELL, individually, and as City Attorney of the City,

Defendants.

West Palm Beach, Florida
February 18, 1983
9:00 o'clock A.M.

APPEARANCES:

KURZINGER & HONCHELL, P.A. by RICHARD E. BOSSE, ESQ., appearing on behalf of the Plaintiff.

ADAMS, COOGLER, WATSON & SMITH by BURKE CULLER, ESQ., appearing on behalf of the Defendants.

The above-styled case came on for trial before the Honorable James C. Paine, Presiding Judge, and a jury, at the U.S. Federal Courthouse, West Palm Beach, Palm Beach County, Florida, on the 18th day of February, 1983, commencing at 9:00 o'clock A.M.

* * * * *

(p. 2) DONALD CRAWFORD, DEFENDANT's WITNESS SWORN

THE COURT: Be seated. Give us your name, and spell your last name.

THE WITNESS: My name is Donald Crawford, C-r-a-w-f-o-r-d.

DIRECT EXAMINATION

BY MR. CULLER:

Q. Good morning, Mr. Crawford.

A. Good morning.

Q. Where do you presently live?

A. I live at 912 Park Lane, Gross Pointe Park, Michigan.

Q. How long have you lived there?

A. I have lived there for two years.

Q. Where did you live before, please?

A. I lived at 1000 Southwest Mulberry Way, Boca Raton, Florida.

Q. What is your present occupation?

A. Financial and management consultant.

Q. For whom, and with whom do you consult?

A. With local governments, and private corporations, primarily with respect to personnel matters; industrial development projects; water and sewage rates.

Q. Local governments dealing with what type of government, especially in Michigan?

* * * * *

(p. 60) Q. Who else was present at that meeting?

A. Red Howell, and myself.

Q. Was Mr. Marchbanks present?

A. No.

Q. Was Mr. Reynolds present?

A. No.

Q. Did you and Mr. Howell discuss the report on that occasion?

A. We did.

Q. Did you make any decisions as to what to do with the report?

A. I'm not aware of any momentous-type decisions. I am sure there may have been some decision, you know, later in the day we are going to look at this, and this is going to happen, or that is going to happen.

Q. Did you read the report on the morning of the 17th?

A. I did.

Q. Were you concerned about any of the allegations contained in the report on the morning of the 17th, if you recall?

A. Yes, I was concerned about them.

Q. What was your concern?

A. My concern was that this was a building department which I had responsibility for that the City of Boca Raton has the responsibility for inspecting every struc-

ture that is constructed in that City to see that it comes up to these Life Safety Codes which the City had adopted, and if these were not being adhered to, it created a liability on the part of the City, (p. 61) and liability on my part that I might be endangering the lives of the people in that community.

Q. Now, you were concerned about the health, safety, and welfare of your citizens as far as the building construction in the City of Boca Raton is concerned, is that correct?

A. That is correct.

Q. Now, is there any statement or evidence in the report which led you to believe that any building in the City of Boca Raton may be built with a danger to the health, safety, and welfare of its occupants?

A. As I recall, yes.

Q. All right. And which building was that?

A. May I have a copy of the report?

Q. Plaintiff's Exhibit 4.

A. The building on 51st Street, or 50th Street. I don't think it really had a specific name at the time. There was Admiral's Walk building. There was the Patios building, I believe.

Q. You mean Century Hill Court Building?

A. Century Hill Court Building. Maybe some others, but that is any building that was mentioned in that report does also lead me to believe that any building that the inspectors dealt with I had concern.

Q. Now, my question is, in that report was there any evidence that any of those buildings that you mentioned, Admiral's Walk,

* * * * *

(p. 68) Q. All right. A whole plethora of areas to be inspected?

A. What was that word?

Q. I strike that word. I may not understand it myself. A whole gamut of areas to be inspected?

A. Right.

Q. And what was the purpose of these inspections?

A. To see the City Codes which had been adopted were adhered to so that the purchaser, or the person who is having that building constructed, would find that it was built to proper standards to basically protect health, safety, welfare, and also with respect to the neighborhood.

Q. So you were concerned about the safety of inhabitants in enforcing codes which had been promulgated by the City of Boca Raton for the safety of the inhabitants of the constructed building?

A. That is correct.

Q. It was the code enforcement's responsibility to enforce those codes as the buildings were being constructed, is that correct?

A. That is correct.

Q. Now, in regards to the area of specialty, this problem about the patio falling down, that would come in the area of specialty of electrical, would it?

A. It would not be a specialized area, but any code enforcement officer has the responsibility to look into all matters

• • • • •

(p. 77) A. I do not.

Q. Now, let's look at the allegations against Mr. Densmore, paragraph IV, discussions of a Mr. John Morey seeing Mr. Densmore receive gratuities of $20 at Admiral's Walk. Are you familiar with Admiral's Walk?

A. I am.

Q. In 1975, you were familiar with Admiral's Walk, were you not?

A. I was.

Q. Why were you so familiar with Admiral's Walk?

A. Because I believe the first workshop session I had in the City of Boca Raton, it come up that Admiral's Walk put up a fence between A-1-A, and the beach, and there was claim there was a private beach which no one had argument to.

Q. There was considerable argument over Admiral's Walk, over that one particular point?

A. It was an issue, yes.

Q. Now, were you concerned when you read the report about the health, safety, and welfare of the occupants who was going to occupy Admiral's Walk?

A. I was.

Q. And what did you do?

A. As I stated with every one of the buildings mentioned in here, we asked there be a review made of that building to determine compliance with the ordinances of the City, and whether (p. 78) or not they had been constructed in accordance with the Code.

Q. And did Mr. Church bring you plans and specification for Admiral's Walk?

A. To the best of my knowledge, he did.

Q. Did you review those plans?

A. I looked at those plans, as I recall. I do not have enough engineering background or building background to thoroughly review the plans myself.

Q. Did you receive assistance of any members of your staff in reviewing those plans?

A. I did.

Q. Did you find any errors in those plans, as best you recall?

A. I do not recall.

Q. And were you ever given a report as to any further inspections made at Admiral's Walk?

A. I was.

Q. And did you receive any reports of any problems at Admiral's Walk as it may have affected health, safety, and occupants of your fair city?

A. I recall that I did.

Q. And do you recall anything about the report at all?

A. Seems like I recall there was a number of doorways that were improperly installed for exit and egress from the building.

Q. Anything else that you recall?

A. I believe there was a problem with regard to underground

• • • • •

APPENDIX D

Dec. 22, 1975

(The following letter was originally handwritten, but because of rule requirements the letter was set in type.)

To: Mr. Donald Crawford
City Manager

From: Neal H. Densmore
391-1404

Subject: Termination

I am in receipt of your letter of Dec. 18, 1975 concerning my termination of employment. Please be advised that I totally refute the violations of the rules of Article XIII, Section II as listed in your letter. More particularly I refute:

(1) paragraph one as related to rule one

(2) paragraph two as related to rule two

(3) paragraph three as related to rule three

(d) paragraph four as related to rule four

(5) paragraph five as related to rule ten

(6) paragraph six as related to rule thirteen

I also refute the specific details listed as paragraphs (A) (B) (C) (D) on page two of your letter.

Pursuant to Article XIII sec. 3 of the personnel rules & regulations you will please accept this letter as a reply and denial of the charges filed against me & a request for a review of my case before you the city manager.

Therefore according to article XIII sec. 3 of the personnel rules & regulations I will be waiting your notification of the date & time of the review to be held within 3 business days frfom the date of this letter.

Very Truly Yours,

/s/ Neal H. Densmore

12/22/75 copy to City Atty.

APPENDIX E

CITY OF BOCA RATON

201 West Palmetto Park Road
Boca Raton, Florida 33432
Phone: (305) 395-1110

CERTIFIED, RETURN RECEIPT

December 23, 1975

Mr. Neal H. Densmore
2232 N.W. 3rd Avenue
Boca Raton, Florida 33432

Dear Mr. Densmore:

Your letter of December 22, 1975, under Section 3, Article XIII of the Personnel Rules and Regulations, requesting a review of the grounds for your termination of employment has been received.

Your review before the City Manager in accordance with your request is scheduled for Monday, December 29, 1975, at 3:00 o'clock P.M.

The purpose of the review is to allow you to refute the charges against you made by the City Manager's letter of December 18, 1975. You may personally or through your attorney, either orally or in writing, present any matter you feel is appropriate to refute the charges.

At the close of your presentation, the Manager will either withdraw the charges or determine that you have failed to refute the charges.

No presentation will be made against you at the review as the Manager, with the advice of the City Attorney, has

determined that the evidence against you is sufficient to establish probable cause for the action taken by him. The sole purpose of the review is to allow you to present your side of the issue as you may desire. The review is scheduled for a duration of one hour and will be taken before an official court reporter, in City Hall.

For your protection, I advise you that you have the following constitutional rights:

1) You have the right to remain silent and not answer any questions.
2) Any statement you make must be freely and voluntarily given.
3) You have the right to the presence and representation of a lawyer of your choice before you make any statement and during any questioning.
4) If at any time during the review you do not wish to answer any questions, you are privileged to remain silent.
5) I can make no threats or promises to induce you to make a statement. This must be of your own free will.
6) Any statement can be and will be used against you in a court of law.

Due to the absence of Mr. Donald D. Crawford from the City at this time, I am responding to your request. Mr. Crawford will have returned by December 29th for the review of your appeal request.

/s/ Frank D. Schuyler
Acting City Manager

WKH:FDS:kem

cc: City Attorney✓
Employee Relations
Director, Public Service

BEST AVAILABLE COPY

APPENDIX F

No. 345736

RECEIPT FOR CERTIFI[ED] MAIL—30¢ (plus postage)

SENT TO
Neal H. Densmore

STREET AND NO.
2232 N.W. 3rd Ave.

P.O., STATE AND ZIP CODE
Boca Raton, FL. 33432

POSTMARK OR DATE
12/31/75

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered ..... 15¢
With delivery to addressee only ..... 65¢
2. Shows to whom, date and where delivered .. 35¢
With delivery to addressee only ..... 85¢

DELIVER TO ADDRESSEE ONLY ..... 50¢
SPECIAL DELIVERY (2 pounds or less) ..... 45¢

POD Form 3800
July 1969

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side)

• GPO 1969 O—356-512

CITY OF BOCA RATON
201 West Palmetto Park Road
Boca Raton, Florida 33432
Phone: (305) 395-1110

December 31, 1975

CERTIFIED, RETURN RECEIPT

Mr. Neal H. Densmore
2232 N.W. 3rd Avenue
Boca Raton, Florida 33432

Dear Mr. Densmore:

In accordance with Article XIII, Section 3, of the Personnel Rules and Regulations, you were afforded an opportunity on Monday, December 29, 1975, at 3:00 P.M. to refute the charges outlined in my December 18, 1975, letter.

After careful consideration of the refutation made by you verbally, and having reviewed all information in my possession concerning your dismissal in the light of your presentations; it is my judgment that your dismissal shall stand.

Sincerely,

/s/ Donald D. Crawford
City Manager
DDC:kem

cc: Richard E. Bosse, Esq.
40 S.E. 1st Avenue
Boca Raton, Florida 33432

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom and date delivered ☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.

345736

INSURED NO.

SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

1 [signature]

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

7-2

SHOW WHERE DELIVERED (*only if requested*)

o55—16—71648-9 GPO

BEST AVAILABLE COPY

APPENDIX G

January 12, 1976

RECEIVED
Jan 12 1976 4:35 pm
City of Boca Raton
Personnel Dept.

Civil Service Board of
The City of Boca Raton
201 W. Palmetto Park Road
Boca Raton, Florida 33432
Re: Neal Densmore/Request for Appeal
Attention: Dr. John E. Miklos, Chairman

Dear Sirs:

Please be advised that the undersigned represents Neal Densmore, employed by the City of Boca Raton until December 18, 1975, as Electrical Inspector.

We are hereby petitioning and requesting an appeal of Mr. Densmore's termination as stated in Mr. Crawford's letter of December 18, 1975. We would respectfully show as grounds therefore, that:

1. The letter of Mr. Donald D. Crawford, City Manager, of December 18, 1975, notifying Mr. Densmore of his termination does not, pursuant to Article XXIV of the Personnel Rules and Regulations of the City of Boca Raton, does not set forth the reasons for such action.
2. Any and all reasons stated in Mr. Donald D. Crawford's letter of December 18, 1975, does not in law or in fact set forth sufficient reasons for the action taken.
3. Mr. Densmore denies completely and totally any and all allegations contained in Mr. Crawford's

letters of December 18, 1975 and December 29, 1975, and will show to this Board that said allegations are unfounded.

4. Mr. Densmore denies any and all allegations contained in any correspondence concerning this action and will show this Board that such allegations are unfounded.

5. Any reasons set forth in any correspondence concerning Mr. Densmore's dismissal or demotion are not sufficient reasons for his dismissal or demotion in law or in fact.

We also herewith request and demand to inspect any and all statements and reports, including the "Reynolds and Marchbanks Report", concerning any activity and alleged wrongdoing of Mr. Densmore.

Therefore, pursuant to Article XXIV of the Personnel Rules and Regulations of the City of Boca Raton, Mr. Neal Densmore, by and through his lawful undersigned attorney requests this board to accept his petition for appeal.

Respectfully,

/s/ Neal H. Densmore
/s/ Richard E. Bosse

REB:so

cc: Donald D. Crawford,
City Manager
Frank K. Schuyler,
Personnel Director
William Howell,
City Attorney

APPENDIX H

CITY OF BOCA RATON

201 West Palmetto Park Road
Boca Raton, Florida 33432
Phone: (305) 395-1110

January 12, 1976

TO: Donald D. Crawford
City Manager
William K. Howell, Jr.
City Attorney

FROM: Frank D. Schuyler
Director, Employee Relations

SUBJ: Civil Service Board Appeal, pages 44-45, City Personnel Rules, RE: Densmore, Neal H.

In accordance with the above rules, Mr. Densmore was notified by letter dated December 31, 1975, of the appeal review available to him. He signed and accepted delivery of this letter of January 2, 1976, of which a copy was provided his attorney, Richard E. Bosse, Esq.

Despite the provisions of the City of Personnel Rules that an employee on probation following a prior hearing for reduction has no appeal rights, both the City administration and Civil Service Board agreed to consider a timely filed appeal. Accordingly, the Civil Service Board instructed the Director, Employee Relations to set aside a date for such a hearing *provided* such written appeal was received prior to 5:00 P.M., January 9, 1976, in accordance with the attached schedule and City Attorney opinion.

As of 5:00 P.M., January 9th, and again as of 12:00 noon, January 12th, no written appeal had been received by this

office, the City Manager office, nor the offices of the City Clerk or City Attorney. Therefore, based upon the City Attorney option, the Personnel Rules and the Civil Service Board policy at their Special Meeting of January 8th to set appeal dates, Mr. Neal H. Densmore has voluntarily abandoned his entitlement to such appeals/hearing procedure. The decision for termination issued previously by the City Manager will be recommended for confirmation in the absence of timely appeal to the Civil Service Board at their next scheduled meeting.

FDS:kem

Encl: Letter dated Dec. 31, 1975, with certified receipt
Summary of correspondence, Densmore, Neal H.

cc: Chairman, Civil Service Board
Members, Civil Service Board
Employee files/City Clerk

APPENDIX I

1i

No. 79-8375-CIV-JCP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,

Plaintiff,

v

CITY OF BOCA RATON, FLORIDA: DONALD R. CRAWFORD, individually and as City Manager of the City, and WILLIAM K. HOWELL, individually and as City Attorney of the City,

Defendants.

VERDICT

We, the jury, return the following verdict:

1. Do you find that the Defendant, Donald Crawford, is liable to the Plaintiff, Neal Densmore, for the violation of the Plaintiff's federal constitutional rights?

YES——— NO—X—

2. Do you find that the Defendant, William K. Howell, is liable to the Plaintiff, Neal Densmore, for the violation of the Plaintiff's federal constitutional rights?

YES——— NO—X—

3. Do you find that the Defendant, City of Boca, Raton, is liable to the Plaintiff, Neal Densmore, for the violation of the Plaintiff's federal constitutional rights?

YES——— NO—X—

4. Do you find that the Defendants are liable to the Plaintiff, Neal Densmore, for conspiring to violate the Plaintiff's federal constitutional rights?

YES——— NO—X—

If your answers to Questions 1 through 4 are all "NO", then go no further than to date and sign this verdict form. If any of your answers to Questions 1 through 4 are "YES", then answer Questions 5 and 6.

5. Do you find that the Defendant, Donald Crawford, acted in "good faith" in his handling of the termination

of the Plaintiff's employment with the City of Boca Raton?

YES——— NO———

6. Do you find that the Defendant, William K. Howel, acted in "good faith" in his handling of the termination of the Plaintiff's employment with the City of Boca Raton?

YES——— NO———

7. What is the total amount, in dollars, of Plaintiff, Neal Densmore's, damages caused by the incident in question?

$———.

SO SAY WE ALL this 24 day of February, 1983.

/s/ ———————————
Foreperson

APPENDIX J

1j

JUDGMENT ON JURY VERDICT

No. 79-8375-CIV-JCP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,

Plaintiff,

v

CITY OF BOCA RATON, FLORIDA: DONALD R. CRAWFORD, individually and as City Manager of the City, and WILLIAM K. HOWELL, individually and as City Attorney of the City,

Defendants.

This action came on for trial before the Court and a jury, Honorable JAMES C. PAINE, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict.

It is Ordered and Adjudged

The plaintiff take nothing and that the action be dismissed on the merits.

Dated at West Palm Beach, Florida, this 2nd day of March, 1983.

/s/ _____
Clerk of Court

SVAVA RINGHEIM, DEPUTY CLERK

cc: Richard E. Bosse, Esq.
J. Burke Culler, Jr., Esq.

APPENDIX K

1k

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-5341

D.C. Docket No. 79-08375-CIV-JCP

NEAL H. DENSMORE,

Plaintiff-Appellant,

versus

CITY OF BOCA RATON, FLORIDA, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

---

(October 15, 1984)

Before FAY and VANCE, Circuit Judges, and MacMahon*, District Judge.

PER CURIAM:

affirmed. See Circuit Rule 25.
"Costs taxed against plaintiff-appellant."

---

* Honorable Lloyd F. MacMahon, U. S. District Judge for the Southern District of New York, sitting by designation.

Judgment Entered: October 15, 1984
For the Court: Spencer D. Mercer, Clerk

/s/ By: .....
Deputy Clerk

ISSUED AS MANDATE: DEC 06 1984

APPENDIX L

ARTICLE XIII

REMOVAL OF EMPLOYEES

The City Manager may, at any time, suspend, demote, transfer or dismiss any employee in the classified service for any cause which will promote the efficiency of the City service, but only in accordance with these rules and regulations.

Section 1. SUSPENSION. The City Manager, or in his absence, any authorized person acting in his place, may, for disciplinary purposes, suspend without pay an employee in the classified service for a reasonable length of time (not to exceed thirty (30) days) because of inefficiency, incompetence, misconduct, negligence, insubordination, or other sufficient causes.

In case the City Manager, or the authorized person acting in his place, suspends any employee, written notice of such suspension shall be given immediately to the affected employee stating the reason for the suspension and the duration thereof. Copy of such notice shall be furnished the Personnel Director and the Civil Service Board forthwith. In the event the employee is not available to receive notice of suspension, it shall be mailed to his last known address by certified mail.

Section 2. GROUNDS FOR REMOVAL. The City Manager may for cause, remove any employee in the classified service, however, in no instance may an employee be removed from his position because of political or religious opinions or affiliations, except if the employee has become

a member of the Communist Party or has been found in violation of the City's Code of Ethics.

The following may be considered grounds for removal, based on the gravity of the offense, however, removal may be made for causes other than those enumerated:

(1) Has been convicted of a criminal offense or misdemeanor involving moral turpitude; or has been guilty of an immoral or criminal act.

(2) Has wilfully violated any of the provisions of the City Charter or these Rules, or has attempted to, or does commit an act or acts intended to nullify or mitigate any of the provisions thereof.

(3) Has violated any lawful or reasonable order or regulation, or failed to obey any reasonable or lawful direction made and given him by a superior where such violation or failure to obey has, or might have, resulted in loss or injury to the City of Boca Raton, the public, or persons or property in the custody of the City.

(4) Has been guilty of conduct unbecoming an employee of the City of Boca Raton.

(5) Has reported for duty, or is actually on duty, while under the influence of intoxicating beverages.

(6) Has contracted some mental or physical ailment or defect which incapacitates him for duty in the City service.

(7) Has been guilty of acts which amount to insubordination or of disgraceful conduct, whether such acts were committed while on or off duty.

(8) Has been wantonly offensive in his conduct or language towards the public, City officers, his superiors, or other employees.

(9) Has been incompetent, negligent, or inefficient to such an extent that his merit ratings fall below the minimum standard prescribed in these rules.

(10) is careless or negligent of the property of the City of Boca Raton, or who steals, or misuses any equipment, materials, property, or other things of value belonging to the City of Boca Raton.

(11) Has failed to pay, or to make reasonable provisions for future payment of his just debts, thereby causing annoyance to his superiors and discredit to the City service.

(12) Has used, or threatened to use, or attempted to use, political influence in securing promotion, leave of absence, transfer, classification change, pay increase, or character of work.

(13) Has taken any fee, gift, or other valuable thing in the course of his work or in connection therewith for his personal use from any firm or corporation when such fee, gift or other valuable consideration is accepted with the understanding that the donor shall, or actually does, receive favors and service not customarily accorded the general public.

(14) Has intentionally falsified time records or failed to report absences from duty to his superiors in accordance with prescribed procedure.

(15) Has been absent from duty without proper leave of absence, or otherwise contrary to prescribed pro-

cedures; or has failed to report for duty after a leave of absence has expired.

(16) Has been habitually tardy without sufficient cause, thus hindering the regular operation of his department.

(17) Has participated in any local political campaign in any way other than by exercising his right as a citizen to cast his vote.

(18) Is wilfully antagonistic in his attitude toward his superiors or fellow employees, continually criticizing orders or rules issued or rules adopted by his superiors, or conducts himself so as to interfere with the proper coordination of the work effort in his department to the detriment of efficient public service.

(19) Who, upon the expiration of earned sick leave, fails to report his inability to return to work to his department head or the Personnel Director or to file, or request filing of, a request for additional leave without pay or transfer of earned vacation time within a reasonable length of time, not to exceed three (3) working days.

(20) Has been convicted of the unlawful possession, use, dispensing or sale of any narcotic, barbituate, mood-ameliorating, tranquilizing or hallucinogenic drug either on duty or off duty.

Section 3. REMOVAL OF EMPLOYEES. The City Manager shall furnish the employee whom he proposes to remove from the City service with a written statement outlining, in detail, reasons for the proposed removal and the date and time such removal becomes effective. A copy of the above mentioned statement shall also be furnished

the Personnel Director. The employee under notice of removal shall be given three (3) business days in which to reply, to refute charges filed against him or request a review of his case by the City Manager. Such reply and/or request for review must be made in writing.

Immediately upon receipt of the employee's reply the City Manager shall notify the Personnel Director of such reply and may request an investigation and report of the case.

The City Manager shall also set a date and time for review of the case if requested which shall be within three (3) business days from the date he received the employee's request for such review, and shall notify the Personnel Director and the employee of such date and time.

If, after careful consideration of the employee's refutation of charges made against him which led to his proposed removal and a review of the Personnel Director's report of the case, if requested, it is the considered judgment of the City Manager that the employee in question should be dismissed from the City service, he shall, within two (2) business days after date of review, notify the affected employee of his decision in writing. Copy of such decision should immediately be furnished the Personnel Director, and copies of his original statement containing reasons for removal, the employee's request for a review of his case, the Personnel Director's report of the case, if requested, and his final decision shall be furnished the Civil Service Board.

In no case shall an employee in the classified service be dismissed with less than one (1) week's notice; except in cases where the employee's flagrant disregard of his

position, these rules, or the health, safety and welfare of the public indicate he should be immediately separated from the City service.

An employee under notice of dismissal shall be considered in work status until such time as his dismissal becomes effective. When an employee because of his conduct, or because of his violation of these rules, or his disregard for the health, safety and welfare of the public, has been suspended without pay and charges against him are being investigated with a view to possible removal of said employee, he shall not be considered in work status.

Section 4. RESIGNATION OF EMPLOYEE. Any employee in the classified service who wishes to resign in good standing shall give his department head a written notice of his intention at least two (2) weeks prior to the date said resignation is to become effective. Notice of resignation shall be immediately forwarded to the Personnel Director, together with said employee's final performance rating.

Upon receipt of such notice of resignation, the Personnel Director shall promptly consult with the department head in order to determine his requirements for replacement of the terminating employee and shall take steps to supply said replacement personnel as soon as possible and in accordance with the provisions of these rules.

Any employee in the classified service who has resigned after giving proper notice may, within one (1) year from date of such resignation, rescind his resignation and request that his name be placed on the re-employment list

for his former classification. Such request must be made in writing to the Personnel Director.

If any employee resigns from the classified service without givin gthe required notice, the Personnel Director shall enter this fact on his roster card and failure to give such required notice of resignation may be considered sufficient reason for rejecting any future application of said employee to re-enter the City service.

Any employee who is absent from duty for three (3) consecutive business days without securing leave from his superior, or without notifying him of the reason for such absence and the time he expects to return, shall be considered to have resigned without notice. It shall be the duty of the department head to report all unauthorized leaves immediately to the Personnel Director in the manner prescribed. All such unauthorized leaves shall be promptly posted on the employee's roster card and shall be considered in his service rating.

APPENDIX M

ARTICLE XXIV

APPEAL TO THE CIVIL SERVICE BOARD

All appeals to the Civil Service Board shall be governed by the provisions of the Charter of the City of Boca Raton, Florida and the Rules of Appeal as follows:

Section 1. PROCEDURE FOR APPEAL. Upon the suspension, demotion or dismissal of any full-time employee in the classified service, the City Manager shall, within twenty-four (24) hours, give the affected employee a written statement of the reasons for such suspension, demotion or dismissal and shall immediately file a copy thereof with the Civil Service Board.

If the empleyee desires he may, within seven (7) days after such suspension, demotion or dismissal, file a request for a hearing before the Board, setting forth in detail in his petition, the basis of his appeal.

On receiving such petition of appeal, the Board shall, within five (5) days, set a date for a hearing. Notice of the time and place of such hearing shall be served on the City Manager and the employee personally or by certified mail at least five (5) days prior to the hearing date. The affected employee and the City Manager shall be notified of their legal right to be accompanied by legal counsel with the service of the time and place of the hearing.

The Board shall conduct the hearing on the date and at the time set and may adjourn the hearing from time to time upon cause shown or upon its own motion, provided that such adjournment shall not extend beyond thirty (30)

days from the date of the employee's suspension, demotion or dismissal.

The Board shall sit as a body to consider all evidence that is presented to it under the Rules of Evidence applicable in the Court of the State of Florida in determining the facts of the case. The City Manager and the affected employee's department head shall first present their evidence, the employee shall present his evidence, and both sides shall have the opportunity for rebuttal. The Board shall determine, on the basis of the evidence submitted, the merits of the case.

The Board may avail itself of an attorney-at-law of its choice. Compensation for such legal counsel shall be fixed and paid by the City of Boca Raton.

All testimony presented at a hearing before the Board shall be presented under oath. For such hearing, upon the request of the City Manager and the affected employee, the Board shall subpoena the attendance and testimony of witnesses and the production of books and papers relative to the case in question. Such subpoenas shall be served by a member of the City of Boca Raton Police Department and it shall be unlawful for any person to fail, or refuse to respond to such subpoena without a legitimate, provable excuse. Members of the Board shall have the opportunity to question any witness at the hearing.

All testimony given at a hearing before the Board shall be recorded by a court reporter. The City of Boca Raton shall pay for the attendance of the court reporter but shall not be required to pay for a transcript unless the City desires a copy thereof.

All witnesses demanding witness fees for attendance at a hearing before the Board shall be entitled to a per diem of one dollar ($1.00) each, which sum shall be paid by the City of Boca Raton. No officer or employee of the City of Boca Raton summoned to testify at a hearing before the Board shall be entitled to any compensation for such service, but if, because of the hearing, the employee is absent from his regular job, it shall be considered authorized leave with pay.

After the hearing the Chairman of the Board shall cause to be spread upon the official minutes of the Board, the facts contained in the appeal, the Board's findings, and its decision which shall be final; provided, however, that either party may petition the Circuit Court in and for Palm Beach County, Florida, for a review by certiorari of the ruling of said Board. Such petition shall be filed within thirty (30) days from the date the Board's decision was rendered. Final decisions of the Board shall be transmitted to the City Manager and executed by him.

Should the Board decide after a hearing that an employee in the classified service has been unjustly suspended, demoted or dismissed, and their decision is not reversed by a ruling or decision of the Circuit Court in and for Palm Beach County, Florida, said employee shall be returned to the position he held prior to his suspension, demotion or dismissal.

Compensation at his regular range and step at the time his suspension, demotion or dismissal shall be paid the affected employee for the time he has been declared unjustifiably suspended, demoted or dismissed; provided that the Board's decision has not been superceded by a decision or ruling of the Circuit Court in and for Palm Beach County, Florida.